

Bills Committee on Stamp Duty (Amendment) Bill 2013

The Administration's Response to Written Submissions

This paper seeks to respond to the written submissions from Mr. Terry YEUNG, Solicitor and Assets Concern Group (資產關注組), which were respectively enclosed in the letters dated 23 June 2014 and 9 July 2014 from the Legislative Council Secretariat (LC Paper No. CB(1)1660/13-14(01) and 1776/13-14(01)).

(I) Views of Mr. Terry YEUNG

2. Mr. YEUNG expressed his personal views on the Inland Revenue Department ("IRD")'s reference to the applicable instruments under the Stamp Duty Ordinance ("SDO") for determining the nature of a property used for different purposes, as well as the charging of doubled ad valorem stamp duty ("AVD"), special stamp duty ("SSD") and buyer's stamp duty ("BSD") on acquisition of a vacant lot without any property construction.

Definition of properties

3. As explained in LC Paper No. CB(1)1060/13-14(02), whether an immovable property is a residential or non-residential property is determined on the basis of its permitted use rather than actual use. According to section 29A(1) of the SDO, the Collector of Stamp Revenue ("the Collector") will make a determination on the basis of the following instruments:

- (a) a Government lease or an agreement for a Government lease;
- (b) a deed of mutual covenant within the meaning of section 2 of the Building Management Ordinance (Cap 344);
- (c) an occupation permit issued under section 21 of the Buildings Ordinance (Cap 123); or
- (d) any other instrument which the Collector is satisfied effectively restricts the permitted use of the property (such as the statutory plans, including Outline Zoning Plans).

A property is regarded as a non-residential property if the existing conditions specified in any of the above instruments do not permit the property to be used wholly or partly for residential

purposes. If the property concerned is not determined as non-residential, it is regarded as residential.

Outline Zoning Plans

4. The Town Planning Board (“TPB”) prepares and publishes Outline Zoning Plans (“OZPs”) in accordance with the Town Planning Ordinance to show the broad land use zonings and the major transport network of planned areas so as to put the development and redevelopment of the areas under statutory planning control¹.

5. Generally speaking, the permitted use of a building is specified in instruments such as government leases, deeds of mutual covenant or occupation permits. It should also conform with the zoning of the lot where the building situates in the OZP. It is only when the government lease does not specify the use of a vacant lot without any property development (deed of mutual covenant and occupation permit are not applicable in such case) that the IRD will take the land use zone specified in the relevant statutory plan as the permitted use of the lot. The TPB reviews and revises OZPs from time to time to cater for district development and needs. Any changes of the land use in a planned area must conform with the OZP and prior approval from the TPB is required (where applicable). However, it is stated in the Schedule of Notes of an OZP that no action is required to make the existing use of any land or building conform to the Plan until there is a material change of use or the building is redeveloped.

6. The IRD determines the nature of a property and assesses the stamp duty payable on individual merits. In other words, if a lot where a non-residential property situates is re-planned for residential development in the OZP, yet existing conditions of the relevant government lease, deed of mutual covenant or occupation permit specify non-residential use for the property, then as long as the immovable property has neither been redeveloped with corresponding revisions effected in the government lease and the deed of mutual covenant, nor application for changing the land use for residential development has been made under the Buildings Ordinance, the Collector will regard the immovable property as a non-residential property under the SDO.

¹ An OZP shows the land use zones, development parameters and major road systems of an individual planning area. Areas covered by OZPs are in general zoned for uses such as residential, commercial, industrial, green belt, open space, government/institution/community uses or other specified purposes. Each OZP is accompanied by a Schedule of Notes showing the uses always permitted (Column 1 uses) in a particular zone and other uses for which prior permission from the TPB must be sought (Column 2 uses). It also states that no action is required to make the existing use of any land or building conform to the Plan until there is a material change of use or the building is redeveloped.

Exemptions for vacant lots

7. The Government does not agree to the proposal of waiving stamp duty on transactions of vacant lots because it encourages land speculations, inconsistent with the Government's policy objective. Under the existing SDO, however, where transactions of residential land (including vacant lots) are intended for redevelopment purposes, the BSD will be refunded and the SSD exempted if the statutory conditions are satisfied so as to avoid stifling land and property transactions intended for redevelopment purposes. On the other hand, part of the AVD paid will be refunded for purchases of residential or non-residential land (including vacant lots) for redevelopment purposes, subject to various conditions specified in the SDO. In other words, the difference between the new and old AVD rates will be refunded for exemption of the doubled AVD. We consider such arrangements have struck a balance between the policies of demand-side management and redevelopment.

(II) Views of the Assets Concern Group

8. Our detailed response to the Assets Concern Group's views is at the **Annex**.

Financial Services and the Treasury Bureau

July 2014

Stamp Duty (Amendment) Bill 2013
The Government's Response to the Submission of the Assets Concern Group

| Major Comments/Issues | Response of the Government |
|---|---|
| <p>1. Objection to the introduction of the doubled ad valorem stamp duty (“AVD”), which will reduce Government revenue and receipts of relevant sectors (e.g. estate agents, fitting-out, transportation, etc).</p> | <ul style="list-style-type: none"> ● The implementation of the doubled AVD aims at according priority to the home ownership needs of Hong Kong permanent residents (“HKPRs”) under exceptional circumstances of an overheated property market aggravated by the shortage of supply. The demand-side management measures do not seek to increase Government revenue. ● We understand that members of the relevant sectors have been affected as turnover in the property market eased back from the peak. We hope there will be an understanding that besides the Government’s demand-side management measures, persistently high property prices also contribute to the drop in transaction volume. If we turn a blind eye to the property bubble, its impact on Hong Kong’s economy and estate agents trade, when it bursts, will only be deeper and longer lasting. Our policy objective is to enable the property market to resume its healthy and steady development as soon as possible. This will, in the long run, benefit our overall economy and real estate-related sectors (e.g. estate agents trade). ● The Government will take appropriate measures including making timely adjustments to the demand-side management measures to cope with the property market situation. The Stamp Duty (Amendment) Bill 2013 (“the Bill”) was passed by the Legislative Council (“the LegCo”) on 15 July 2014. The Government has |

| Major Comments/Issues | Response of the Government |
|---|---|
| | undertaken to conduct a review after one year and report to the LegCo. |
| 2. Violation of the principle of low tax rates under the Basic Law. | <ul style="list-style-type: none"> ● We believe that the doubled AVD measure complies with the Basic Law. Its policy objective is to accord priority to the needs of HKPRs for purchasing residential properties for self-occupation. The proposals made by the Bill are reasonable and appropriate, and the introduction of the doubled AVD is a proportionate measure. ● The doubled AVD is a legitimate form of taxation, which is governed by Article 108 of the Basic Law. |
| 3. Objection to rent control. | <ul style="list-style-type: none"> ● The comment is noted. Rent control is outside the scope of the Bill. ● The government has conducted research to analyse the effectiveness of implementing tenancy control (including rent control) in Hong Kong in the past and relevant experience from overseas. The findings were reported at the meeting of the Legislative Council Panel on Housing on 7 July 2014 (LC Paper No. CB(1)1709/13-14(01)). |