

# 立法會 *Legislative Council*

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## **Bills Committee on Stamp Duty (Amendment) Bill 2013**

### **Background brief prepared by the Legislative Council Secretariat**

#### **Purpose**

This paper provides background information on the Stamp Duty Ordinance (Amendment) Bill 2013 which is to amend the Stamp Duty Ordinance (Cap. 117) ("SDO") to increase the ad valorem stamp duty ("AVD") rates. It also gives a summary of the discussion by the Panel on Financial Affairs ("FA Panel") and the Panel on Housing ("Housing Panel") on the relevant legislative proposal.

#### **Background**

2. The increased global liquidity, an exceptionally low interest rate environment and keen competition in the mortgage market have fuelled the surge in property prices in recent years. Over the years, the Administration has implemented a number of measures to safeguard against the risk of a property bubble. Since 2010, the Administration has been responding to the situation through the introduction of long, medium and short-term measures in four areas, namely, increasing land supply; combating speculative activities; enhancing the transparency of property transactions; and preventing excessive expansion in mortgage lending. The demand side management measures aim at alleviating the demand for housing by according priority to meeting the needs of Hong Kong Permanent Residents ("HKPRs") under the exceptional circumstances of an overheated property market with supply shortage.

#### **Stamp Duty (Amendment) (No. 2) Bill 2010**

3. As the exuberant state of the property market has spread to the mass market, the Administration considers it necessary to introduce measures targeting at speculators to curb speculation, reduce the risk of the development

of property bubble and ensure the healthy and stable operation of the property market. The Stamp Duty (Amendment) (No. 2) Bill 2010 was introduced in December 2010 to impose a Special Stamp Duty ("SSD") on residential properties of all values on top of AVD, at the point of resale if the properties were acquired on or after 20 November 2010 and resold within 24 months after acquisition<sup>1</sup>. A bills committee was set up to scrutinize the Stamp Duty (Amendment) (No. 2) Bill 2010 which was subsequently passed by the Legislative Council ("LegCo") on 22 June 2011. A copy of the report on the deliberations of the Bills Committee is hyperlinked in the **Appendix**.

### **Stamp Duty (Amendment) Bill 2012**

4. While speculation has declined since the introduction of SSD, abundant liquidity and low interest rates have continued to fuel the property boom. According to the Administration, overall flat prices have risen by 20% during the first nine months of 2012, culminating at a hefty increase of 107% over the 2008 trough. By September 2012, overall flat prices have surpassed the 1997 peak by 26%. The exuberant state of the property market was evident in all segments of the market, but particularly at the mass market end.

5. In view of the above, after consulted the Executive Council ("ExCo") on 26 October 2012, the Financial Secretary ("FS") announced on the same day further demand side management measures, i.e. the enhancements to SSD and introduction of a Buyer's Stamp Duty ("BSD"), which will apply to residential properties acquired on or after 27 October 2012 upon the enactment of the new legislation. On 9 January 2013, the Government introduced the Stamp Duty (Amendment) Bill 2012 into LegCo to amend SDO to implement the proposals on enhanced SSD and new BSD<sup>2</sup>. The Bill is currently under scrutiny by a Bills Committee in LegCo.

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<sup>1</sup> SSD payable is calculated at the following regressive rates for different holding periods –

- (a) 15% if the property has been held for six months or less;
- (b) 10% if the property has been held for more than six months but for 12 months or less; and
- (c) 5% if the property has been held for more than 12 months but for 24 months or less.

<sup>2</sup> The major proposals of the Stamp Duty (Amendment) Bill 2012 include:

- (a) to adjust upward the duty rates and to extend the holding period in respect of SSD, as follows –
  - (i) 20% of the amount or value of the consideration if the residential property has been held for six months or less;
  - (ii) 15% of the amount or value of the consideration if the residential property has been held for more than six months but for 12 months or less; and
  - (iii) 10% of the amount or value of the consideration if the residential property has been held for more than 12 months but for 36 months or less;
- (b) to introduce a BSD on residential properties acquired by any person except an HKPR. BSD is to be charged at a flat rate of 15% on all residential properties, on top of the existing stamp duty and SSD, if applicable. There will be exemptions from BSD under certain circumstances; and
- (c) to introduce a mechanism whereby SSD and BSD rates can be revised by means of subsidiary legislation.

## Stamp Duty (Amendment) Bill 2013

6. The Administration has pointed out that while the measures of enhanced SSD and the new BSD have helped cool down the residential property market towards the end of 2012, the market turned bullish again on entering 2013. Overall flat prices have rallied by 120% over the recent trough in 2008 and were 34% above the peak in 1997. The home purchase affordability ratio<sup>3</sup> worsened to around 52% in the fourth quarter of 2012, exceeding for the first time the long-term average of 49% over 1992-2011. There were also evident signs of overheating in the non-residential property market as prices of retail, office and flatted factory space surged by 39%, 23% and 44% respectively in 2012. Compared with the recent trough in 2009, sale prices for these properties had soared by 148%-202%.

7. Given the above situations, and after consultation with the ExCo, FS announced on 22 February 2013 that SDO be amended to implement the following proposals with effect from 23 February 2013 –

- (a) to increase the AVD rates on transactions for residential as well as non-residential properties, as follows –

Property consideration or market value (whichever was the higher)	Existing AVD rate	Proposed AVD rate
Up to \$2,000,000	\$100	1.50%
\$2,000,001 to \$3,000,000	1.50%	3.00%
\$3,000,001 to \$4,000,000	2.25%	4.50%
\$4,000,001 to \$6,000,000	3.00%	6.00%
\$6,000,001 to \$20,000,000	3.75%	7.50%
\$20,000,001 and above	4.25%	8.50%

The proposed AVD rates will apply for all transactions except for those in respect of residential properties where –

- (i) the buyer(s) is/are HKPR(s)<sup>4</sup> who is/are not beneficial owner(s) of any other residential property in Hong Kong at the time of acquisition (which means the time when the first chargeable agreement or conveyance is executed, if there is more than one such instrument); or

<sup>3</sup> This refers to the ratio of mortgage payment for a 45-square metre flat to median income of households (excluding those living in public housing), for a tenure of 20 years at the prevailing mortgage rate.

<sup>4</sup> The same definition of HKPR used in the BSD context will be adopted. A HKPR is a person who holds a valid permanent identity card ("PIC") issued under the Registration of Persons Ordinance (Cap. 177); or a person who is eligible to but exempted from applying for the issue of a PIC under regulation 25(e) of the Registration of Persons Regulation (Cap. 177A).

- (ii) one of the buyers is a HKPR and all the other buyers (be they HKPRs or not) are his/her close relatives (i.e. parent, spouse, child, brother or sister) and none of them is a beneficial owner of any other residential property in Hong Kong at the time of acquisition;
- (b) to advance the charging of AVD on non-residential property transactions from the conveyance on sale to the agreement for sale, to tally with the existing arrangement for residential properties; and
- (c) to empower FS to adjust the value bands and existing and proposed AVD rates by way of subsidiary legislation subject to negative vetting by LegCo.

8. In order to cater for the situation where the HKPR-buyers intend to change their single residential properties, there will be arrangements for charging the old AVD rates for HKPRs who have disposed of all their old residential properties before acquiring a residential property or who can dispose the old properties within six months from the date of acquisition of the new property.

9. The Administration also proposes that exemptions from the enhanced AVDs will be granted under a number of circumstances. For instance, the old AVD rates will apply to acquisition or transfer of a residential property between close relatives, irrespective of whether they are HKPRs and whether they are beneficial owners of any other residential property in Hong Kong at the time of acquisition; and gift of a residential or non-residential property received by charitable institutions exempted from tax under section 88 of the Inland Revenue Ordinance (Cap. 112) ("IRO") will be exempted from all AVD.

10. The Government introduced the Stamp Duty (Amendment) Bill 2013 into LegCo on 5 April 2013 to enhance the AVD rates and implement other proposals in the new measures to address the overheated property market. At the House Committee meeting held on 19 April 2013, Members agreed to form a bills committee to study the Stamp Duty (Amendment) Bill 2013.

### **Discussion by Panels**

11. The FA Panel and Housing Panel were briefed on the proposals pertaining to the Stamp Duty (Amendment) Bill 2013 at the joint meeting held on 26 March 2013. The major concerns raised by members are summarized below.

### Target indicators and effectiveness of the proposed measures

12. Some members were of the view that the Administration should introduce target indicators to evaluate the effectiveness of the proposed measures and to determine the timing for exit of the new measures or implementing further measures to strengthen the effect if necessary. There was a suggestion that the Administration should assess whether the purchases of residential property by HKPRs had increased after implementation of the new demand side management measures as this would demonstrate the effectiveness of the demand management measures in according priority to the housing needs of HKPRs. Some members pointed out that the measure to enhance AVD rates should not be implemented for an unduly long period as it might hamper the operation of a free economy in Hong Kong and result in over-regulation of the property market; and were concerned that potential risks would arise from the suppression of housing demand without increasing the supply.

13. Given that the rates of the existing AVD for properties of all value bands would be doubled across the board under the Administration's proposal, there were concerns that the acquisition cost would be increased indiscriminately for all property buyers, hence instead of driving down flat prices, the proposal would further aggravate the difficulties for genuine home-buyers of the middle and lower-income people in purchasing flats. Some other members urged the Administration to formulate tougher measures to address the overheated property market, such as introducing capital gains tax and restoring rent control to curb increases in the rental of residential flats.

14. The Administration advised that it would take into account a host of factors, including affordability of the general public, speculative activities in the property market, investment sentiments as well as situations in the local and external economy in assessing the effectiveness of the proposed measures. It would continue to closely monitor the property market development, and would not rule out the possibility of introducing further measures to tackle the overheated property market.

### Proposed exemptions from the enhanced AVD

15. As there were a number of proposed exemptions from the enhanced AVD measure to cater for specified circumstances, some members expressed concern that the exemptions were complicated and seemed to deviate from the principle of simple tax regime in Hong Kong. There was also concern about possible loopholes arising from the exemption mechanism. For instance, a non-HKPR could obtain the beneficial ownership of a flat (or a share of it) without subject to the enhanced AVD after death of the HKPR-buyer or divorce with the HKPR-buyer if the non-HKPR was the spouse of the HKPR-buyer. Investors could also circumvent payment of the enhanced AVD through transfer of company shares in effecting property transactions.

16. Members noted that exemption from the enhanced AVD would be granted to HKPR-buyers intending to change their single residential properties, i.e. HKPR who had disposed of all their old residential properties before acquiring a residential property, or disposing them within six months from the date of acquisition of the new property. As it was not uncommon for HKPR-buyers to purchase a flat for his own residence while jointly owned another existing property with his/her close relatives, some members suggested that the Administration should consider granting exemption if the HKPR-buyer only had a share in the beneficial ownership of the single residential property concerned. For instance, the property was an item of an estate.

17. The Administration advised that the mechanism for implementing the new measures and relevant exemptions was intended to be simple and clear to facilitate operation. As such, the enhanced AVD rates would be applicable to residential property transactions if, at the time of acquisition, the HKPR was the beneficial owner of any other residential property in Hong Kong, including residential property inherited from a deceased person, irrespective of whether the ownership was in part or in full.

18. As regards some members' suggestion of granting exemptions to non-profit-making organizations which were not qualified as charitable bodies under IRO, having regard to their need to acquire properties for the development and expansion of the organizations, the Administration advised that this was not a policy objective of the proposals. Hence, an organization incorporated as a company in Hong Kong, whether or not it was profit-making in nature, would be subject to all AVD for their property transactions. Nevertheless, the proposal had included exemption for gift of a residential or non-residential property received by charitable institutions exempted from tax under IRO.

## **Relevant Papers**

19. A list of relevant papers is in the **Appendix**.

## Bills Committee on Stamp Duty (Amendment) Bill 2013

## List of relevant papers

Date	Event	Paper
22 June 2011	Council meeting	Report of the Bills Committee on Stamp Duty (Amendment) (No. 2) Bill 2010 (LC Paper No. CB(1)2444/10-11) <a href="http://www.legco.gov.hk/yr10-11/english/bc/bc02/reports/bc020622cb1-2444-e.pdf">http://www.legco.gov.hk/yr10-11/english/bc/bc02/reports/bc020622cb1-2444-e.pdf</a>
2 November 2012	Joint meeting of Panel on Financial Affairs and Panel on Housing	Legislative Council Brief on "Further Measures to Address the Overheated Property Market" issued by the Transport and Housing Bureau <a href="http://www.legco.gov.hk/yr12-13/english/panels/hg/papers/fahg1102-thb201210-e.pdf">http://www.legco.gov.hk/yr12-13/english/panels/hg/papers/fahg1102-thb201210-e.pdf</a>
December 2012	Legislative Council Brief	Legislative Council Brief on "Stamp Duty (Amendment) Bill 2012" issued by the Transport and Housing Bureau <a href="http://www.legco.gov.hk/yr12-13/english/bills/brief/b01_brf.pdf">http://www.legco.gov.hk/yr12-13/english/bills/brief/b01_brf.pdf</a>
26 March 2013	Joint meeting of Panel on Financial Affairs and Panel on Housing	Legislative Council Brief on "New Measures to Address the Overheated Property Market" issued by the Financial Services and the Treasury Bureau <a href="http://www.legco.gov.hk/yr12-13/english/panels/fa/papers/fahg0326-fstb201302-e.pdf">http://www.legco.gov.hk/yr12-13/english/panels/fa/papers/fahg0326-fstb201302-e.pdf</a>
April 2013	Legislative Council Brief	Legislative Council Brief on "Stamp Duty (Amendment) Bill 2013" issued by the Financial Services and the Treasury Bureau <a href="http://www.legco.gov.hk/yr12-13/english/bills/brief/b10_brf.pdf">http://www.legco.gov.hk/yr12-13/english/bills/brief/b10_brf.pdf</a>