

香港特別行政區政府
The Government of the Hong Kong Special Administrative Region

運輸及房屋局

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25 May 2010

Ms Becky Yu
Clerk to Bills Committee
Bills Committee on the
Stamp Duty (Amendment) Bill 2010
Legislative Council Secretariat
Legislative Council Building
8 Jackson Road
Central, Hong Kong

(Fax: 2869 6794)

Dear Ms Yu,

The Stamp Duty (Amendment) Bill 2010 Bills Committee

Meeting held on 17 May 2010

Thank you for your letter of 19 May 2010. The following is the consolidated reply from the Transport and Housing Bureau, the Financial Services and Treasury Bureau and the Inland Revenue Department (IRD).

The "quantitative easing" policy adopted by many economies since the onset of the financial tsunami has increased global liquidity, resulting in a huge inflow of "hot money" into Hong Kong's financial system. Interest rates have also been kept at a low level that is rarely seen. On the other hand, the relatively low supply of residential flats in the past two years, coupled with the gradual recovery of our economy, has led some people to worry about under-supply. These are the key factors which have fuelled the increase in property prices. Because of these short-term boosting factors, there is a risk of a property bubble.

To reduce the risk of a property bubble, the Financial Secretary proposed in the 2010-11 Budget four measures to stabilize the property market, and at the same time prevent public policies from causing unnecessary fluctuations in the property market. These four measures include increasing supply to address the fundamental issue, combating speculation activities through tax measures, enhancing transparency in property transactions, and preventing excessive expansion in mortgage lending. On combating speculative activities through tax measures, the Budget proposed to increase the stamp duty rate for property transactions valued more than \$20 million to 4.25%, and disallow deferred payment of stamp duty for those transactions.

Considerations for setting the threshold at \$20 million

When considering the types of transactions which should be subject to high stamp duty rate and should not be allowed for deferred payment of stamp duty, we have made reference to the Hong Kong Monetary Authority's guidelines to banks in October 2009 to reduce the loan-to-value ratio from 70% to 60% for residential properties valued at \$20 million or more. Also, generally speaking, foreign investors are more interested in properties of high value.

“Confirmor” in general refers to property buyers who have resold the relevant property before assignment is completed. The following table shows that number of “confirmor” cases in the past three years.

Number of Transactions and Confirmor cases from 2007 to 2009

Amount of Consideration (\$)	2009		2008		2007	
	No. of transactions ⁽¹⁾ (% to all transactions)	% of Confirmor cases to all transactions ⁽²⁾	No. of transactions ⁽¹⁾ (% to all transactions)	% of Confirmor cases to all transactions ⁽²⁾	No. of transactions ⁽¹⁾ (% to all transactions)	% of Confirmor cases to all transactions ⁽²⁾
\$3,000,000 or below	75,524 (65.6%)	3.79%	65,075 (67.8%)	5.26%	87,304 (70.7%)	3.24%
\$3,000,001 to \$6,000,000	26,150 (22.7%)	3.07%	20,625 (21.5%)	5.74%	22,409 (18.1%)	3.46%
\$6,000,001 to \$10,000,000	6,717 (5.8%)	2.55%	5,573 (5.8%)	3.43%	7,180 (5.8%)	2.55%
\$10,000,001 to \$20,000,000	4,457 (4.0%)	3.79%	3,056 (3.2%)	3.47%	4,311 (3.5%)	3.41%
\$20,000,001 or above	2,244 (1.9%)	1.92%	1,602 (1.7%)	3.18%	2,371 (1.9%)	1.81%

(1) Figures provided by the Lands Registry.

(2) Figures provided by IRD.

Considerations for increasing the stamp duty rate of residential transactions valued above \$20 million to 4.25%

Being an international city, the headquarters of multi-national corporations (MNCs) in Asia, and a major global financial centre, Hong Kong maintains a simple tax regime with low tax rates. Various MNCs with businesses in Hong Kong purchase residential properties for long-term investment (including high quality private residential properties with potential to appreciate in value). Hong Kong's competitive edge in this aspect maybe undermined if the rate of stamp duty of residential properties is too high. In considering increasing the stamp duty rate on property transactions valued over \$20 million, we have made reference to the tax regime of neighbouring economies. For property transactions of similar value, the tax rate in Singapore is 2.7% whereas that of Australia is 4.47%. The Administration considers it appropriate to increase the stamp duty rate on property transactions valued over \$20 million to 4.25% at this stage.

Stamp duty, profits tax from speculation on residential properties, and the work of IRD in protecting revenue from tax

IRD's major function is to collect tax according to the relevant ordinance. The work involves assessing tax, collecting tax/fine, combating and reducing the chance of tax evasion and avoidance, and taking prosecutions under relevant ordinance.

Stamp duty is one of the transaction costs of a property transaction. According to the Stamp Duty Ordinance (Cap. 117), no instrument chargeable with stamp duty shall be acted upon, filed or registered unless it is duly stamped. Normally, purchasers' solicitors will pass the duly stamped instruments to the Land Registry for registration to safeguard the interest of their clients. Therefore, under normal circumstances, stamp duty on instruments of transfer of property ownership will be secured. IRD will take input the particulars of the instruments of transfer of property ownership into its database.

Besides, under the Inland Revenue Ordinance (Cap. 112), all profits (except those from sale of capital assets) obtained by a person carrying on a trade, profession or business in Hong Kong will be subject to profits tax if such profits arise in or are derived from Hong Kong. Property speculators are generally regarded as carrying on a business and have to pay profits tax under the Inland Revenue Ordinance. For a property transaction, regardless of whether the transaction is carried out through a "Confirmor", IRD will take into account precedent court cases and consider all the relevant facts of the case, including the number of

transactions, the duration of the property held as well as the background, motive, financial arrangements and mode of operation, in determining whether the transaction should be treated as a business and the vendor has to pay tax for the profits earned.

Some of the property speculators have opened tax files. They will report profits in their tax returns. IRD will handle their cases according to normal procedures.

For property speculators with no tax files yet, IRD has established procedures to screen and identify cases suspected of involving property speculation for further examination. With the assistance of computer programme, IRD will issue enquiry letters to the party concerned for details of the transactions, including the background, motive, financial arrangements and mode of operation. IRD will scrutinise the information provided and consider other relevant information in determining whether speculation is involved. Cases which are regarded as involving property speculation and unanswered cases will be passed to IRD's Assessing Sections for profits tax assessment. Taxpayers who disagree with the assessment may raise objection and lodge appeals. Just like other tax assessments, IRD will handle these cases in accordance with the established mechanism.

Taking 2008-09 as an example, excluding cases with tax files, about 13 000 suspected cases on property speculation were identified by computer programme. Some 4 000 of them required follow-up action after initial processing. For substantiated cases, IRD will take action to collect profits tax from those persons or companies.

IRD does not collect information specifically on speculation of properties by means of "Confirmor", but in view of the concern and requests from some Members, IRD has specifically compiled information on property speculation involving confirmor cases for the financial years from 2006-07 to 2008-09 for the Committee. Details are set out at [Annex](#).

Proposal to prohibit subsale through confirmor

At present, property transactions through 'confirmors' are legal commercial activities. But from 1994 to 1998, the Government has taken various measures to curb speculation activities, including prohibiting subsale through confirmor, imposing restrictions on the target groups for sale of uncompleted residential flats, and requiring developers to put up for sale all flats within a specified period through the Lands Department's

Consent Scheme. We will continue to closely monitor market developments. Where necessary we will consider reinstating appropriate measures to ensure a healthy and stable development of the property market.

Proposal for IRD to raise the stamp duty rate and refund the increased portion for properties not having transactions within a specific period (say two years)

Some Members proposed that IRD raises the stamp duty rate and refunds the increased portion for properties not having transaction with a specific period (say two years). In this regard, IRD has looked into some relevant figures. Take 2009 as an example, over 90% of the property transactions valued more than \$20 million did not involve resale within two years of purchase. If the proposal is adopted, over 90% of the property buyers will have to pay additional amount of stamp duty first, with a view to seeking refund two years later. This will cause inconvenience to the majority of home buyers. Moreover, this will have additional resource implications to IRD.

As a matter of fact, stamp duty has to be paid for property transactions irrespective of whether the properties will bring in profits. As explained above, property speculators are generally regarded as carrying on business and have to pay profits tax under the Inland Revenue Ordinance. IRD has already put into place an effective mechanism to screen possible property speculation cases with no tax files for follow up actions.

Proposal for introducing capital gains tax for property transactions

Some Members suggested that capital gains tax be introduced. Hong Kong has all along maintained a simple tax regime with low tax rates. There is no capital gains tax in the prevailing tax system. Introducing capital gains tax for curbing property speculation implies a fundamental change to the tax system of Hong Kong. We need to be very careful about this.

Yours sincerely,

(Eugene Fung)
for Secretary for Transport and Housing

c.c.

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未有開立利得稅檔案但經稅務局電腦篩選懷疑炒賣物業的個案
**Cases identified by Inland Revenue Department's computer programme
as suspected property speculation cases without profits tax files**

財政年度 Financial year	(A) 電腦程式 篩選出來的個案 (註釋1及2) Cases identified by computer programme (Notes 1 & 2)	(B) 經人手初步覆檢後 需要再跟進的個案 Suspected dealing cases requiring follow-up actions after initial processing	(C) (B)欄的個案中 牽涉確認人買賣的個案* [] 代表當中非居港人士所佔 的數字 Confirmor cases in column (B) <i>The number in [] represents non-resident cases included</i>	(D) (C)欄的個案中 已評稅的個案 [] 代表當中非居港人士所佔 的數字 Number of assessed cases in column (C) <i>The number in [] represents non-resident cases included</i>	(E) 就(D)欄的個案 評定的稅款總額 [] 代表當中非居港人士所佔 的數字 Total tax assessed for cases in column (D) <i>The number in [] represents non-resident cases included</i>
2006-07	9 800	2 500	124 [4]	119 [4]	\$9.7M [\$1.0M]
2007-08	19 000	6 700	690 [29]	628 [22]	\$52.7M [\$6.2M]
2008-09	13 700	4 300	274 [13]	198 [10]	\$78.2M [\$1.2M]

(*) 有關數字不包括其他經評稅而不牽涉確認人買賣的個案。

The figures **do not include** other assessed cases which are NOT confirmor cases.

註釋 Notes

1. (A)欄所示個案數目是經電腦程式篩選出來的個案，篩選對象為懷疑涉及炒賣物業，但未有為賣方開立利得稅檔案的個案。

Column (A) represents the number of cases identified by computer programme, which targets at suspected property dealing cases where no profits tax file has been opened for the vendor.

2. 「個案」以納稅人為單位。每個個案可能涉及多於一宗的物業買賣。

The number of cases is counted on taxpayer basis. Each case may involve more than one property transaction.

3. 確認人是指購入樓宇後，在完成樓宇轉讓手續前把樓宇轉售的人〔包括個別人士或有限公司〕。

Confirmors refer to people who buy a property and then resell it before the actual assignment process for the property is completed (including individual or corporation).

4 「非居港人士」是指未持有香港身份證的個別人士或沒有商業登記並於海外成立的有限公司。

Non-residents refer to individuals who do not possess a Hong Kong Identity Card or overseas incorporated companies which have not applied for business registration.

5. 以上所示為截至 2010 年 5 月的情況。因有關工作尚未完結，未能提供 2009-10 年度的統計數字。

The Statistics represent the picture as at May 2010. Those for 2009-10 cannot be provided as the work has not been completed.