

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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22 June 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,

Bills Committee on Stamp Duty (Amendment) Bill 2010
Follow-up to meeting on 15 June 2010

I refer to your letter of 15 June 2010. We are asked to comment on the Committee Stage Amendments which Hon James To has indicated an intention to propose (“the CSAs”), particularly on the technical aspects of the amendments and whether the CSAs were within the scope of the Bill.

On whether the CSAs are within the scope of the Bill, the Administration will provide its written submissions when the President examines the CSAs for procedural compliance if Hon James To gives a formal notice of his intention to move the CSAs.

Observations on the technical aspects of the CSAs

On the technical aspects of the CSAs, we have the following observations –

Scope of application of the proposed CSAs

- (a) The CSAs were intended to apply to a chargeable agreement for sale the consideration for which exceeds 20 million. However, the CSAs do not provide for such a scope of application.

Amendment to section 29C(3)

- (b) The first few words of this subsection clearly indicate that it serves to avoid doubt. It is not meant to provide for substantive rules. It is undesirable to incorporate substantive provisions providing for new rules into this subsection.
- (c) According to our understanding at the Bills Committee meeting on 15 June, the CSAs were intended to apply to a sub-sale agreement only. However, this is inconsistent with the wording of the proposed amendment to this subsection. The proposed amendment says that "the agreement in subsection (3)(b) is chargeable with an additional stamp duty in a sum of X % (sic)". The coverage of section 29C(3)(b) is not limited to a sub-sale agreement. It covers any second agreement for sale made in respect of all or any part of the property that is the subject of the first agreement. This second agreement can be entered into either by the vendor or purchaser under the first agreement, or both, and it is not necessarily a sub-sale agreement.

Amendment to section 29C(4)

- (d) The existing section 29C(4) merely describes, by way of examples, how the principle illustrated in section 29C(3) applies in circumstances where there is a series of more than 2 agreements made in respect of the same, or any part of the same property. It does not provide for any new rules. The legal effect of making new rules through amending statutory examples is unclear.
- (e) The policy intentions as reflected from the proposed amendment to this subsection are not clear. First, it just repeats that a stamp duty calculated by reference to the purchase price is chargeable on an agreement for a sub-sale. There is no mention of any additional stamp duty. Second, it deals with a sub-sale agreement only, other types of second and subsequent agreements (as referred to in section 29C(4)(b)) are not affected. This is inconsistent with the proposed amendment to section 29C(3).

Proposed Note 2A in Schedule 1

- (f) The note appears to provide that the liability for payment of the stamp duty in the case of an agreement for sale under section 29C(3)(b) or (4)(a) lies with the purchaser under the first agreement. This applies not only to the additional stamp duty proposed but also to the existing stamp duty chargeable by reference to the purchase price. This is a significant deviation from the existing rule insofar as the liability for payment of the existing stamp duty is concerned. The note does not seem to reflect the real intention.
- (g) In the first part of the Note, it is stipulated to the effect that the purchaser under the first agreement is to be liable for payment of the stamp duty chargeable on the second agreement. It is necessary to clarify whether this rule applies even if the second agreement is entered into between the vendor under the first agreement and a third party (i.e. the purchaser under the first agreement is not a party to the second agreement).

Consequential amendments

- (h) If it is intended that only a confirmor is to be held liable for the additional stamp duty, it appears that section 4(3) should be amended as well. Further examination of the Stamp Duty Ordinance is required to identify any necessary consequential amendments.
- (i) It is also important to consider whether an amendment to the commencement clause is necessary. Otherwise, the rule about the additional stamp duty will apply retrospectively to applicable agreements entered into after 1 April this year.

Yours sincerely,

(Eugene Fung)
for Secretary for Transport and Housing

c.c.

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