



立法會 LEGISLATIVE COUNCIL
石禮謙 議員 Hon Abraham Shek Lai-Him J.P.

(譯文)

致：香港中區
晨臣道 8 號
立法會秘書處
法案委員會秘書
余麗琼女士

余女士：

《2010 年印花稅(修訂)(第 2 號)條例草案》— 委員會審議階段修正案

對於本人就《2010 年印花稅(修訂)(第 2 號)條例草案》(條例草案)提出的以下各項意見，當局並沒有正面回應：

- 豁免對出售／轉售未經發展的土地徵收額外印花稅。
- 就現時已豁免普通印花稅及額外印花稅的同一機構內部聯營公司之間的物業轉讓，當承讓乙方由甲方得到物業再行轉讓時，計算額外印花稅的 24 個月，應由原本轉讓甲方獲得物業的一天算起。
- 加入日落條款，定下機制，賦予立法會權力為撤銷額外印花稅訂立期限。

我在附件中詳細列出向條例草案委員會提出的委員會審議階段修正案(修正案)，並在以下列出修正案的理據：

出售／轉售未經發展的土地

額外印花稅是政府為遏抑住宅市場炒風「特事特辦」而推行的措施。發展商在市場上買進未經發展土地而及後再轉售給另一位買家，當中並無涉及任何炒賣住宅單位的成分，因此，政府實在沒有理據向買賣未經發展土地徵收額外印花稅。

向出售／轉售未經發展土地徵收額外印花稅，可能會產生一些不利市場的後果，包括拖慢土地供應：



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- 發展商因為財務狀況逆轉，被迫將手上未經發展的空置地盤轉售。
- 發展商可能因為其他商業考慮而決定出售未經發展的土地，例如所擁有的土地規模太小，未足以發展成優質樓宇，因此將土地出售予鄰近發展商，合併地盤作較大規模的物業發展。
- 就以上兩種情況，徵收額外印花稅都會降低發展商出售土地的意欲，因此拖慢土地供應。

本人因此動議修正案 29 條 CA (2) 及 29 條 DA (2)，當發展商取得未經發展土地而於 24 個月內將該土地轉讓時，將不會被徵收額外印花稅。

聯營公司之間進行物業轉讓不應徵收特別印花稅

政府當局已接納，跟據條例草案第 29 條 H (3) 或 45 條，聯營公司之間由甲方向乙方進行物業轉讓時，不用徵收額外印花稅。

但是，當局拒絕接納，當物業由乙方向甲方承讓後再轉讓時，計算額外印花稅的 24 個月應該由甲方取得物業之日起計算。當局認為，轉讓日期應該由乙方向甲方承讓物業的一天計起。

本人認為，既然這些轉讓都屬於同一機構內部公司之間的轉讓，24 個月的合理計算方式應該由轉讓甲方首次購入物業的一天計起。

本人因此動議加入修正案 29 條 CA (11) 及 29 條 DA (13B)，針對同一機構內聯營公司之間的物業轉讓，就徵收額外印花稅而言，物業的轉讓日期應該以轉讓甲方首次購入物業起計算。

引入日落條款

政府當局一直強調，額外印花稅是針對本港近日熾熱的物業市場短線炒風而必須作出「特事特辦」的手段。



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既然如此，當物業市場轉趨淡靜時，額外印花稅的存在價值當不復存在，應予以廢除。

額外印花稅最大的弊端，是大大削弱了眾業主和投資者在出售或轉讓物業時所應享有的彈性。再者，無數無辜的小業主根本從沒有參與炒買活動卻因為特別印花稅而備受影響。例如，真正用家可能會因為財政困難（失業或投資失利）而被迫出售物業，又或者不可預期的家庭狀況逆轉（婚姻問題，傷殘，家人成員故世，子女求學）而需要出售物業。我相信，本港現時一百五十萬名小業主都會受到額外印花稅的影響。然而，當局一直拒絕為這些特別情況制訂豁免，為這些業主解憂。

雖然額外印花稅並非一項為增加政府收入而訂立的稅項，可是條例草案既沒有為額外印花稅的訂立終止日期，亦沒有任何機制賦予立法會權力，審定額外印花稅應否廢全。

根據現時的條例草案，額外印花稅將會變成印花稅條例中的一項永久措施。

自從政府訂立額外印花稅的政策以來，除了地產發展商以外，更引起不少業主，投資者，地產代理，律師以致銀行界的普遍關注。當缺乏日落條款時，額外印花稅更有以下弊端：

- 令真正用家，業主與及投資者陷入不公平和不利的處境；
- 損害香港作為自由市場的聲譽；
- 對香港最重要的經濟支柱帶來長遠的不良影響。

雖然當局經已承諾，將會不時檢查實施額外印花稅的需要，但現時條例草案內根本沒有條款規定政府必須定時進行檢查，立法會亦沒有權力指令政府執行這項規定。本人認為，在缺乏有效的機制底下，立法會不應通過條例草案。本人建議根據這個機制：



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- 政府必須檢討額外印花稅的廢全，並向立法會提出建議，否則額外印花稅必須撤銷。
- 必須賦予立法會權力監察檢討，及決定額外印花稅應否予以廢除。

本人因此動議引入日落條款，由 2010 年 11 月 20 日起計，18 個月之後額外印花稅將予以撤銷。本人亦會動議加入新條款第 69 條，規定：

- a. 額外印花稅將會在生效後 18 個月，即 2012 年 5 月 19 日凌晨撤銷。
- b. 立法會有權就日落條款制訂議案。

石禮謙

二零一一年五月二十五日



立法會 LEGISLATIVE COUNCIL
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By Fax & By Hand

25 May 2011

Ms Becky Yu,
Clerk to Bills Committee
Bills Committee on the
Stamp Duty (Amendment) (No.2) Bill 2010,
Legislative Council Building,
8 Jackson Road,
Central, Hong Kong

Dear Ms Yu,

Stamp Duty (Amendment) (No.2) Bill 2010 - Proposed Committee Stage Amendments ("CSA")

CSA to address outstanding issues

1. The Administration has not responded positively to my proposal to address the following issues:
 - (a) No special stamp duty ("SSD") should be charged on the acquisition and disposal of bare sites.
 - (b) Where there has been a transfer between associated corporations which is exempted from both stamp duty and SSD, and the transferee subsequently disposes of the property, the date of acquisition, for the purpose of SSD, should be treated as the date of acquisition by the transferor, and not the date of transfer to the transferee.
 - (c) There should be a "sunset clause" imposing a "sunset date" when SSD will cease to be charged unless the Legislative Council ("**Legco**") passes a resolution to extend the sunset date.
2. I attach my proposed CSA for consideration by the Bills Committee (**Attachment**) and would set out briefly the reasons for my proposal.

Acquisition and disposal of bare sites

3. SSD is imposed as an extraordinary measure under current exceptional circumstances to discourage short-term speculation in residential units. Where a developer acquires a bare site and sells the site before any building is erected on the site, no speculation concerning residential units is involved and there should be no justification for imposing any SSD.



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4. The imposition of SSD on disposal of bare sites may have the unintended effect of reducing land supply. By way of examples:
 - (a) A developer who has acquired a bare site may go into financial difficulties and may wish to sell the site before any building is erected on it.
 - (b) A developer may, for commercial reasons, decide not to develop the bare site himself. For example, he may wish to sell a site which is too small to be developed into a quality building to another developer who owns an adjoining site to enable the other developer to amalgamate the 2 sites into a larger site for a better development.
 - (c) In either of the above cases, the imposition of SSD would inhibit the disposal of the bare site by the developer with the consequence that supply is reduced.
5. I am therefore proposing that where a person acquires a bare site and disposes of the site before any building is erected on the site within 24 months, SSD shall not be chargeable.
6. The proposed amendments to sections 29CA(2) and 29DA(2) are intended to cover the above scenarios.

Transfers between associated corporations

7. The Administration has accepted that SSD is not chargeable for a transfer between associated corporations where the transfer is exempted from payment of stamp duty under section 29H(3) or 45.
8. However, the Administration refuses to accept that for the purpose of SSD, in the event of a disposal by the transferee, the 24-month period should count from the date of acquisition by the transferor, instead of the transferee. The Administration is saying that the period should count from the date of transfer to the transferee.
9. These transfers are effectively internal transfers within the same group. It would be logical to count the 24 months from the date when the group first acquired the property, i.e. the date when the transferor acquired the property.
10. The proposed new sections 29CA(11) and 29DA(13B) provide that where an internal transfer has taken place, the date of acquisition for the purpose of SSD shall be deemed to be the date of acquisition by the transferor.



Introduction of Sunset clause

11. The Government says that SSD is needed as an extraordinary measure under the current exceptional circumstances in Hong Kong to address short-term speculation in residential units.
12. One would expect these exceptional circumstances to disappear in the not-too-distant future and in such event, SSD should cease to apply.
13. One major problem with SSD is that it will severely reduce the flexibility of home owners and genuine investors in the disposal or transfer of their properties. What is more, a lot of innocent private owners who have not in any way participated in any speculation may be caught by the measure. An owner may be forced to sell his unit due to financial difficulties (such as loss of his job or unexpected losses in his business) or change in family circumstances (such as matrimonial problems, disability or death in the family and location of schools to which his children are accepted). I am given to understand that there are some 1.5 million home owners in Hong Kong and they will all be affected. Yet, the Administration has so far refused to make provision for exemption or relief in these circumstances.
14. Although SSD is not imposed as a tax for revenue purpose, the Bill does not provide for a date for the cessation of SSD, nor is a mechanism provided for the review of the suitability of SSD by Legco.
15. As it now stands, the Bill will incorporate SSD as a permanent feature of the Stamp Duty Ordinance.
16. SSD has already given rise to a lot of concerns among home owners, investors, estate agents, the legal profession and the banking and financial community, quite apart from developers. The imposition of SSD without a sunset clause:
 - (a) is unfair and prejudicial to home owners and genuine investors;
 - (b) will undermine the reputation of Hong Kong as a free-market economy;
 - (c) will ultimately have an adverse impact on an important sector of the economy of Hong Kong.
17. The Administration has indicated that it will review SSD from time to time, but as presently drafted, the Administration is under no compulsion to do so, nor can Legco compel the Administration to do so. In my view, it would not be right for Legco to allow the Bill to go through without providing for a mechanism whereby:



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- (a) the Administration must review SSD and put forward its recommendation to Legco, failing which SSD shall cease to apply;
 - (b) the Legco will be assured of a review and the decision to continue or not to continue with SSD will rest with Legco.
18. I am therefore proposing a sunset date of say, 18 months from 20 November 2010, by which date SSD will cease to apply. You will see that I propose a new section 69 which provides that:
- (a) the SSD will cease to apply at midnight on 19 May 2012, being 18 month after the effective date of the SSD;
 - (b) Legco has power to amend the sunset date by resolution.

Yours sincerely,

Abraham Shek Lai-him

The Stamp Duty (Amendment) (No.2) Bill

**Draft Committee Stage Amendments
proposed by
The Hon Abraham Shek Lai-him SBS, JP**

Section 29CA

1. In the proposed section 29CA(2), by deleting the full stop and adding -

" , and for the purpose of this section and head 1(1B) in the First Schedule, special stamp duty is not chargeable if a person acquired residential property comprising land without any building erected thereon and disposes of the property before any building is erected on the land, within the 24-month period"

2. In the proposed section 29CA by adding the following -

"(11) For the purpose of this section and head 1(1B) in the First Schedule, if a person acquired residential property from another person under an instrument on which stamp duty is not chargeable pursuant to section 29H(3) or 45, the date of acquisition of the property by that person shall be deemed to be the date on which the other person had acquired the property."

Section 29DA

3. In the proposed section 29DA(2), by deleting the full stop and adding -

" , and for the purpose of this section and head 1(1AA) in the First Schedule, special stamp duty is not chargeable if a person acquired residential property comprising land without any building erected thereon and disposes of the property before any building is erected on the land, within the 24-month period"

4. In the proposed section 29DA by adding the following -

"(13B) For the purpose of this section and head 1(1AA) in the First Schedule, if a person acquired residential property from another person under an instrument on which stamp duty is not chargeable pursuant to section 29H(3) or 45, the date of acquisition of the property by that person shall be deemed to be the date on which the other person had acquired the property."

New Section 69

5. By adding the following -

Section 69 added

Before the First Schedule -

Add

"69. Expiry of [Stamp Duty (Amendment) (No. 2) Ordinance 2010] [*Note the Ordinance should now be re-named "Stamp Duty (Amendment) Ordinance 2011".*]

- (1) The amendments to this Ordinance effected by the [Stamp Duty (Amendment) (No. 2) Ordinance 2010] [*Note the Ordinance should now be re-named "Stamp Duty (Amendment) Ordinance 2011".*] shall expire at midnight on 19 May 2012.
- (2) The Legislative Council may by resolution amend subsection (1) by substituting for the date specified therein such date as may be specified in the resolution.

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