

立法會
Legislative Council

LC Paper No. CB(1) 1094/10-11
(These minutes have been seen
by the Administration)

Ref : CB1/BC/2/10/2

Bills Committee on Stamp Duty (Amendment) (No. 2) Bill 2010

Minutes of first meeting
held on Friday, 17 December 2010, at 8:30 am
in Conference Room B of the Legislative Council Building

Members present : Hon James TO Kun-sun (Chairman)
Hon Albert HO Chun-yan
Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP
Dr Hon Margaret NG
Hon CHAN Kam-lam, SBS, JP
Hon Miriam LAU Kin-yee, GBS, JP
Hon Abraham SHEK Lai-him, SBS, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon WONG Kwok-hing, MH
Hon LEE Wing-tat
Dr Hon Joseph LEE Kok-long, SBS, JP
Hon WONG Ting-kwong, BBS, JP
Hon Ronny TONG Ka-wah, SC
Hon Starry LEE Wai-king, JP
Hon Paul CHAN Mo-po, MH, JP
Hon Paul TSE Wai-chun
Hon Alan LEONG Kah-kit, SC
Hon Tanya CHAN

Member absent : Hon CHIM Pui-chung

Public officers : **For item II**
attending

Transport and Housing Bureau

Mr D W PESCOD
Permanent Secretary for Transport and Housing
(Housing)

Ms Annette LEE
Deputy Secretary for Transport and Housing
(Housing)

Mr Eugene FUNG
Principal Assistant Secretary for Transport and
Housing (Housing)(Private Housing)

Inland Revenue Department

Mr WONG Kuen-fai
Deputy Commissioner of Inland Revenue (Technical)

Mr HONG Wai-kuen
Senior Superintendent of Stamp Office

Department of Justice

Mr Sunny CHAN
Senior Assistant Law Draftsman

Mr Manuel NG
Government Counsel

Clerk in attendance : Miss Becky YU
Chief Council Secretary (1)1

Staff in attendance : Miss Winnie LO
Assistant Legal Adviser 7

Mrs Mary TANG
Senior Council Secretary (1)2

Miss Mandy POON
Legislative Assistant (1)4

I. Election of Chairman

Mr Albert HO, the member who had the highest precedence among those present at the meeting, presided at the election of Chairman of the Bills Committee. Mr Albert HO invited nominations for the chairmanship of the Bills Committee.

2. Mr LEE Wing-tat nominated Mr James TO, and the nomination was seconded by Mr Paul CHAN. Mr James TO accepted the nomination.

3. There being no other nominations, Mr James TO was declared Chairman of the Bills Committee.

II. Meeting with the Administration

- (LC Paper No. CB(1) 822/10-11(01) — Background brief on Stamp Duty (Amendment) (No. 2) Bill 2010
- LC Paper No. CB(1) 822/10-11(02) — Marked-up copy of the Bill
- LC Paper No. CB(1) 822/10-11(03) — Submission from Mr David WEBB)

Background information on the Bill

- (LC Paper No. CB(3) 278/10-11 — The Bill
- Ref: HD(CR)5/50/1/177 — The Legislative Council Brief
- LC Paper No. LS14/10-11 — Legal Service Division Report)

4. The Bills Committee deliberated (Index of proceedings attached in **Annex**).

5. The Administration was requested to -

- (a) advise the circumstances/consequences if the commencement date in clause 1(2) was deleted or amended;
- (b) consult the Development Bureau regarding the consequential amendments to the Land Titles Ordinance (Cap. 585) under clauses 17 and 18;
- (c) review the existing mechanism to ensure the timely release of information on the property market for reference by the public;
- (d) advise the measures which the Administration had considered before deciding to, inter alia, impose a special stamp duty (SSD) and introduce the prudential risk management measures for mortgage lending. To also advise the other measures which the Administration might consider if the aforesaid measures were not effective in curbing property speculation;

- (e) advise how the Administration could assist genuine home buyers who had difficulties in securing mortgage as a result of the prudential risk management measures for mortgage lending. To also advise the prevailing mortgage policy of The Hong Kong Mortgage Corporation Limited in respect of private residential properties;
- (f) advise the bases upon which the threshold of 24 months and the various regressive rates for SSD were arrived at. To also advise whether consideration would be given to only holding the seller liable for SSD;
- (g) consider extending the scope of the Bill to cover commercial properties to deter the spread of speculative activities to the commercial sector;
- (h) consider expanding the exceptions for SSD to include financial hardship and substantial changes of circumstances, as well as providing an appeal mechanism on SSD. To also advise whether similar relief had been provided for the obsolete estate duty or in current tax legislation;
- (i) To evade SSD, some people may choose to set up property-holding shell companies to conduct speculation through transfer of shares of these companies. To advise whether there was an increase in the number of shell companies and property transactions through these companies after announcement of SSD on a monthly basis while the Bills Committee was in session. To also advise whether there was a question of double taxation if the profits incurred from both transfer of shares of companies and their property transactions would be subject to tax;
- (j) provide experience in overseas jurisdictions, such as the Mainland and Australia, in preventing property bubble;
- (k) explain the application of the terms “acquire” and “dispose of” in cases of partition deed, deed poll, vesting order, order of court and mortgage (legal or equitable), and whether the application of the two terms was different from that in the existing scheme for stamp duty under the Stamp Duty Ordinance (Cap. 117). To also provide a written response to the letters in Appendices I and II to LC Paper No. CB(1)855/10-11(02);

- (l) advise whether SSD would apply to Provisional Sale and Purchase Agreements even if no Sale and Purchase Agreements were subsequently signed;
- (m) advise the feasibility of including a sunset clause for SSD;
- (n) advise whether rents in the private residential property market would rise since people tend not to buy properties as a result of SSD; and
- (o) provide all the Administration's responses to questions raised by stakeholders at various forums.

6. Members agreed to the following schedule of meetings -

<u>Date</u>	<u>Time</u>
Tuesday, 21 December 2010	8:30 am
Tuesday, 4 January 2011	4:30 pm
Friday, 21 January 2011	3:00 pm or immediately after the House Committee, whichever was later
Wednesday, 9 February 2011	2:30 pm
Wednesday, 23 February 2011	8:30 am

Members also agreed to invite deputations to attend the meeting on Tuesday, 4 January 2011.

III. Any other business

7. There being no other business, the meeting ended at 10:40 am.

Bills Committee on Stamp Duty (Amendment) (No. 2) Bill 2010

**Proceedings of the first meeting
on Friday, 17 December 2010, at 8:30 am
in Conference Room B of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
<i>Agenda Item I - Election of Chairman</i>			
000056 - 000155	Mr Albert HO Mr LEE Wing-tat Mr Paul CHAN Mr James TO	Mr James TO was elected Chairman of the Bills Committee.	
<i>Agenda Item II - Meeting with the Administration</i>			
000156 - 000910	Chairman	Schedule of meetings	
000911 - 001342	Chairman Administration	Administration's explanation on the Stamp Duty (Amendment) (No. 2) Bill 2010 (the Bill)	
001343 - 001430	Chairman	Members who purchased properties after 20 November 2010 were reminded to declare interest.	
001431 - 002249	Mr LEE Wing-tat Administration	Mr LEE Wing-tat's views/enquiries - (a) supported the spirit of the Bill which was in line with the Democratic Party's stance on the need for measures to curb speculative activities; (b) while the number of property transactions had been dropped soon after the announcement of the special stamp duty (SSD), its effect seemed to have died down lately as evidenced by the rise in both the number of transactions and property prices. Under such circumstances, whether the Administration had any further measures to deal with speculative activities; (c) the ultimate solution to a stable and steady development of the property market was to ensure a sufficient supply of flats in the long run; and	The Administration to - (a) review the existing mechanism to ensure the timely release of information on the property market for reference by the public; and (b) advise the other measures which the Administration might consider if the aforesaid measures were not effective in curbing property speculation.

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		<p>(d) the Administration should establish a platform for timely release of updated information on property market to facilitate better understanding of the property market by the public.</p> <p>Administration's response -</p> <p>(a) reportedly, there was a drop in the number of property transactions as well as property prices;</p> <p>(b) the definitive effect of SSD was not known at this stage given the time lag between the signing of Agreements for Sale and Purchase (ASP) and the registration of ASP with the Land Registry;</p> <p>(c) SSD aimed to deter short-term sales and had shown effect as some property owners had put their properties for lease due to the “wait-and-see” sentiment of prospective buyers in the light of SSD;</p> <p>(d) the Steering Committee on the Regulation of the Sale of First-hand Residential Properties by Legislation would consider practical means to further facilitate the public to have easy access to property information. Meanwhile, the Administration would endeavour to provide more updated property information; and</p> <p>(e) would continue to monitor the market situation and would take further measures to curb speculation as necessary. However, it was not appropriate to comment on these measures which were market sensitive.</p>	
002250 - 003101	Chairman Mr Albert HO Administration	<p>Mr Albert HO's views -</p> <p>(a) supported in principle the concept of the Bill, but would consider amending some of the provisions;</p>	<p>The Administration to advise -</p> <p>(a) how it could assist genuine home buyers who had</p>

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		<p>(b) concerned about the difficulties faced by genuine home buyers in securing mortgage as a result of the prudential risk management measures for mortgage lending, particularly those who had purchased their properties just before the announcement of SSD because the banks would tend to under-estimate the values of the properties after the announcement; and</p> <p>(c) whether genuine home buyers who had difficulty in securing mortgage could apply to the Hong Kong Mortgage Corporation (HKMC) for topping up the mortgage rate to 90%.</p> <p>Administration's response -</p> <p>(a) SSD should not affect genuine home buyers who normally used the properties as their residential homes and would not re-sell the properties within a short period of time;</p> <p>(b) banks would always look at market information in their valuation and the debt servicing ratio of the borrower; and</p> <p>(c) the maximum loan-to-value ratio for properties of value under \$8 million was maintained at 70% and HKMC might be able to provide insurance to top up the mortgage loan up to 90% of the value of the properties.</p>	<p>difficulties in securing mortgage as a result of the prudential risk management measures for mortgage lending; and</p> <p>(b) the prevailing mortgage policy of HKMC in respect of private residential properties.</p>
003102 - 003805	Chairman Mr CHAN Kam-lam Administration	<p>Mr CHAN Kam-lam's views/enquiries -</p> <p>(a) supported SSD and the prudential risk management measures for mortgage lending to curb speculative activities; and</p> <p>(b) how to monitor shell companies engaged in property speculation, and whether additional resources would be provided to the Inland Revenue Department (IRD) in monitoring these shell companies.</p>	

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		<p>Administration's response -</p> <p>(a) the new measures aimed to increase the cost of property speculation, so that speculators would re-think before engaging in speculative activities;</p> <p>(b) IRD was starting to collect information on property speculation through property-holding shell companies. It would step up the monitoring of property speculation through transfer of shares of property-holding shell companies; and</p> <p>(c) cases of suspected property speculation, whether by individuals or by companies, would be referred to IRD's Assessing Sections for profits tax assessment.</p>	
003806 - 005040	Chairman Ms Audrey EU Administration	<p>Ms Audrey EU's views/enquiries -</p> <p>(a) the scope of the Bill should be extended to cover commercial properties to deter the spread of speculative activities to the commercial sector. The rise in commercial property prices would drive up commercial rents and hence would affect livelihood;</p> <p>(b) it would be more justified to hold the seller liable for SSD; and</p> <p>(c) whether there was an appeal mechanism to allow owners who faced exceptional hardship and had a genuine need to re-sell their properties within 24 months to appeal against SSD.</p> <p>Chairman's enquiry on whether relief on grounds of financial hardship was granted for the obsolete estate duty or in current tax legislation.</p> <p>Administration's explanation -</p> <p>(a) the Bill was specifically targeted at</p>	<p>The Administration to -</p> <p>(a) consider extending the scope of the Bill to cover commercial properties to deter the spread of speculative activities to the commercial sector;</p> <p>(b) consider expanding the exceptions for SSD to include financial hardship and substantial changes of circumstances, as well as providing an appeal mechanism on SSD;</p> <p>(c) consider holding</p>

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		<p>speculation of residential properties, and there was no intention to include commercial properties at this stage. Besides, there might be delay in the implementation of the Bill if the scope was extended to cover commercial properties;</p> <p>(b) there was no ground for appeal on financial hardship under existing tax ordinances. Moreover, it was not easy to provide a definition of financial hardship for SSD scheme; and</p> <p>(c) both seller and purchaser were jointly and severally liable for stamp duty under the Stamp Duty Ordinance (Cap. 117) (SDO), and this should be maintained as ASP had to be duly stamped before a transaction could be completed.</p>	<p>the seller liable for SSD; and</p> <p>(d) advise whether relief on grounds of financial hardship was granted for obsolete estate duty or in current tax legislation.</p>
005041 - 005655	Chairman Mr WONG Ting-kwong Administration	<p>Mr WONG Ting-kwong's views/enquiries -</p> <p>(a) supported the principles of the Bill;</p> <p>(b) the bases upon which the threshold of 24 months and the various regressive rates for SSD were arrived at; and</p> <p>(c) the applicability of SSD to premises which could be used for both commercial and residential purposes.</p> <p>Administration's explanation -</p> <p>(a) recent property sales had indicated that there had been a surge in short-term resale of properties, with the number of resale within 12 months and 24 months increased by 114% and 32% respectively in the first nine months of 2010 as compared with the same period in 2009;</p> <p>(b) the threshold of 24 months was considered reasonable and the use of regressive rates for SSD was meant</p>	<p>The Administration to -</p> <p>(a) advise the bases upon which the threshold of 24 months and the various regressive rates for SSD were arrived at; and</p> <p>(b) explain the application of SSD in respect of partition deed.</p>

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		<p>to deter resale within a short period of time; and</p> <p>(c) under SDO, stamp duty was charged on ASP in accordance with the permitted use of the premises as shown in the Government lease at the time of sale. If the premises could be used for residential purposes, ASP would be chargeable with stamp duty. Otherwise, it would not be.</p>	
005656 - 010645	Chairman Mr Ronny TONG Administration	<p>Mr Ronny TONG views/enquiries -</p> <p>(a) supported the Bill;</p> <p>(b) application of the terms "acquire" and "dispose of" under proposed section 29CA in cases of partition deed, deed poll, option, vesting order, order of court and mortgage (legal or equitable) and whether the application of the two terms was different from that in the existing scheme for stamp duty under SDO; and</p> <p>(c) the need for a sunset clause for SSD which was an extraordinary measure.</p> <p>Administration's explanation -</p> <p>(a) the term "acquire" under proposed section 29CA referred to transfer of equitable ownership or legal ownership of the property;</p> <p>(b) SSD would apply to ASP and Conveyance on Sale within a holding period of 24 months; and</p> <p>(c) the public would expect the Administration to go through the normal legislative process to amend the legislation if SSD was considered no longer necessary. Also, it was not possible for the Administration to pre-determine a date when SSD was deemed no longer necessary to curb speculation.</p>	<p>The Administration to -</p> <p>(a) explain the application of the terms "acquire" and "dispose of" in cases of partition deed, deed poll, vesting order, order of court and mortgage (legal or equitable), and whether the application of the two terms was different from that in the existing scheme for stamp duty under SDO; and</p> <p>(b) advise the feasibility of including a sunset clause for SSD.</p>

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010646 - 011846	Chairman Ms Starry LEE Administration	<p>Ms Starry LEE's views/enquiries -</p> <p>(a) the propriety of announcing SSD without any prior consultation and making it effective the following day before enactment of the relevant legislation;</p> <p>(b) as speculators could evade SSD by setting up property-holding shell companies to conduct speculation through transfer of shares of these companies, whether there was an increase in the number of shell companies and property transactions through these companies after announcement of SSD;</p> <p>(c) unlike profits tax, there was no appeal mechanism for SSD under SDO; and</p> <p>(d) experience in overseas jurisdictions, such as the Mainland and Australia, in preventing property bubble.</p> <p>Administration's explanation -</p> <p>(a) SSD was a specific measure targeted at speculative activities. In order for the measure to be effective, it had to come into immediate effect to ensure that no one could take advantage of the new measure between the announcement of SSD and the enactment of the new law. However, SSD would be levied upon enactment of the Bill, which was subject to the scrutiny and approval by the Legislative Council;</p> <p>(b) there would be risk involved in acquiring the shares of a company as this would include acquisition of all the liabilities of the company; and</p> <p>(c) being a global economy, Hong Kong would need to be very careful about imposing measures which would restrain the free flow of capital. Hence, measures adopted overseas might not be relevant to local circumstance.</p>	<p>The Administration to -</p> <p>(a) advise whether there was an increase in the number of shell companies and property transactions through these companies after announcement of SSD on a monthly basis while the Bills Committee was in session; and</p> <p>(b) provide experience in overseas jurisdictions, such as the Mainland and Australia, in preventing property bubble.</p>

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011847 - 014130	Chairman Mr Paul TSE Administration	<p>Mr Paul TSE's views/enquiries -</p> <p>(a) measures which the Administration had considered before deciding to impose the proposed SSD since there were other more effective measures, including capital gains tax, to curb property speculation;</p> <p>(b) as SSD was a special measure, it might not be appropriate to apply the existing arrangement for stamp duty to hold both the seller and the buyer jointly and severally liable for SSD, which might not be fair to buyers;</p> <p>(c) speculators could circumvent SSD through transfer of shares of property-holding shell companies. It would be very difficult to recover the stamp duty or SSD from property-holding shell companies, particularly those set up by migrant investors and had no asset nor capital;</p> <p>(d) the trading of shares of listed companies engaged in property speculation could also be regarded as one kind of speculative activities;</p> <p>(e) there was a question of double taxation if the profits incurred from both transfer of shares of companies and their property transactions would be subject to tax; and</p> <p>(f) whether SSD would apply to Provisional Sale and Purchase Agreements (PASP) even if no ASP was subsequently signed.</p> <p>Administration's explanation -</p> <p>(a) in the 2010-2011 Policy Address, a package of measures was announced to ensure the stable development of property market. These included increasing land supply for housing;</p> <p>(b) the simple taxation system adopted in Hong Kong had worked well and</p>	<p>The Administration to -</p> <p>(a) advise the measures which it had considered before deciding to, inter alia, impose a SSD and introduce the prudential risk management measures for mortgage lending;</p> <p>(b) advise whether there was a question of double taxation if the profits incurred from both transfer of shares of companies and their property transactions would be subject to tax; and</p> <p>(c) advise whether SSD would apply to PASP even if no ASP was subsequently signed.</p>

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		<p>should be maintained;</p> <p>(c) SSD was target specific and would only apply to short-term resale. Details of application of SSD were laid down in the Bill. Briefings had also been held with stakeholders;</p> <p>(d) the arrangement to hold both the seller and buyer jointly and severally liable for SSD was consistent with the existing practice;</p> <p>(e) there were risks associated with acquiring the shares of property-holding shell companies. Meanwhile, IRD was monitoring property speculation through transfer of shares of property-holding shell companies; and</p> <p>(f) double taxation would only arise if tax was levied on the same source of income. The tax on profits arising from trading of shares and normal business would not amount to double taxation.</p>	
014131 - 015729	Chairman Dr Margaret NG Administration	<p>Dr Margaret NG's enquiries -</p> <p>(a) retrospective effect of SSD, and the consequences if the commencement date in clause 1(2) was deleted or amended;</p> <p>(b) meaning of "acquire" under proposed section 29CA as well as the binding effect of PASP ;</p> <p>(c) justifications for holding both the seller and buyer jointly and severally liable for SSD given that this was meant to be an extraordinary measure;</p> <p>(d) impact of SSD on inheritance matters; and</p> <p>(e) effect of clauses 17 and 18 of the Bill on the Lands Titles Ordinance (Cap. 585) (LTO).</p>	<p>The Administration to -</p> <p>(a) advise the circumstances/ consequences if the commencement date in clause 1(2) was deleted or amended;</p> <p>(b) provide a written response to the letters in Appendices I and II to LC Paper No. CB(1) 855/10-11(02) as well as questions raised by stakeholders at various forums; and</p>

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		<p>Administration's response -</p> <p>(a) the commencement date under clause 1(2) was an important part of the Bill;</p> <p>(b) the arrangement for holding both the seller and buyer jointly and severally liable for stamp duty and SSD was consistent under SDO;</p> <p>(c) SSD would apply to residential properties at the point of resale if the transfer of property ownership was made on or after 20 November 2010 and resold within 24 months after acquisition; and</p> <p>(d) clauses 17 and 18 of the Bill were consequential amendments to LTO in relation to the cancellation of existing arrangements for deferral of stamp duty chargeable with ASP and would not affect the operation of LTO.</p>	<p>(c) consult the Development Bureau regarding the consequential amendments to LTO under clauses 17 and 18.</p>
015730 - 020309	Chairman Dr Joseph LEE Administration	<p>Dr Joseph LEE's concerns -</p> <p>(a) rents in the private residential property market would rise since people tended not to buy properties as a result of SSD;</p> <p>(b) need to monitor property speculative activities through transfer of shares of property-holding shell companies as it would drive up property prices and have adverse impact on genuine home buyers; and</p> <p>(c) need to invite relevant stakeholders, including banks, to give views on the Bill.</p> <p>Administration's response -</p> <p>(a) it was expected that more owners would be leasing out their properties following the announcement on SSD; and</p>	<p>The Administration to advise whether rents in the private residential property market would rise since people tended not to buy properties as a result of SSD.</p>

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		(b) the provision of more land for housing coupled with other measures to curb property speculation would help stabilize the property market.	
020310 - 021104	Chairman Mr WONG Kwok-hing Administration	<p>Mr WONG Kwok-hing's concerns/enquiries -</p> <p>(a) as the effect of SSD on the property market seemed to have lasted for only 10 days, whether other additional measures were being contemplated to curb property speculation;</p> <p>(b) need to increase the supply of residential flats; and</p> <p>(c) whether genuine home buyers who had to re-sell their properties because of financial hardship or changes in family circumstances could be exempted from SSD.</p> <p>Administration's response -</p> <p>(a) would monitor the property market closely and take appropriate measures as necessary; and</p> <p>(b) there were provisions in the Bill which dealt with exemptions, but there were difficulties in providing exemptions on grounds of financial hardship.</p> <p>Chairman's remark that members could consider amending the Bill to provide for exemptions for SSD on grounds of financial hardship or changes in family circumstances.</p>	
021105 - 021136	Chairman	Date of next meeting.	