CB(1) 964/10-11(02)

ACCA

The Chairman
Bills Committee on Stamp Duty (Amendment) (No. 2) Bill 2010
Legislative Council Secretariat
3rd floor Citibank Tower
3 Garden Road
Central
Hong Kong

31 December 2010

Dear Sir

Stamp Duty (Amendment) (No. 2) Bill 2010 (the Bill)

On behalf of ACCA (Association of Chartered Certified Accountants) Hong Kong, we would like to provide below our comments on the Bill.

Scope of the Bill

As the Bill only covers residential properties, we are uncertain as to whether the existing scope of the Bill could effectively deter speculative activities in the property market, particularly the speculative activities of commercial/industrial properties. Effective measures taken in the residential properties market will shift the speculation to non-residential properties.

Transitional Arrangement

We also note that the Special Stamp Duty (SSD) will be imposed on all formal agreements signed on or after 20 November. This means that provisional agreements entered into before this date with formal agreements signed afterwards will also be caught under the Bill. This creates an additional cost burden to those genuine home buyers and long term investors who entered into the provisional agreements before 20 November 2010, which is not the intended purpose of the Bill.

We suggest that the SSD should be imposed on cases where the provisional agreements are entered into on or after 20 November 2010.

Persons who are liable to the SSD

Under the Bill, both the seller and the buyer will be held jointly and severally liable for the SSD. As it is the seller who speculates and benefits from the transaction, the seller should solely be responsible for the SSD. We suggest that it should be clearly stipulated in the proposed legislation that the seller is liable for the SSD. The conveyance lawyer for the buyer has the obligation to withhold and pay the SSD from the sale proceeds. The latter suggestion will ensure the revenue is protected in case the seller is a non-HK resident.

Exemption available under the Bill

We consider that the current exemptions / reliefs available under the Bill are inadequate to cover situations where the "forced" disposal of property is caused by reasons other than speculation.

Whilst there may not be an exhaustive list of exemptions / relief to cover all situations, we suggest to cover the situation where the buyer is forced to "dispose" of the property within 24 months of purchase in the situation where the property has been used for the residence of the buyer and is taken possession by a mortgagee (for example a licensed bank) by means of a foreclosure order.

Alternative to the SSD

With the objective to curb short-term speculative activities so as to ensure the healthy and stable operation of the property market, the Government may consider an alternative of imposing a withholding tax on the sale proceeds from the disposal of any property within 3 years of its acquisition (by the conveyance lawyer for the buyer) with a refund mechanism by means of the seller filing a tax return.

Should you wish to discuss the above suggestions in more detail, kindly please feel free to contact us at 2524 4988.

Yours faithfully

Rosanna Choi
Chairman