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

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Clerk to Bills Committee
Bills Committee on the
Stamp Duty (Amendment)(No.2) Bill 2010
Legislative Council Secretariat
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(Fax: 2869 6794)

Dear Ms Yu,

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

I refer to your letters of 20 December 2010 and 22 December 2010. With input from the Transport and Housing Bureau (THB), the Financial Services and Treasury Bureau, the Inland Revenue Department (IRD) and the Department of Justice (DoJ), the attached paper is a consolidated response of the Administration to some of the questions raised by the Members.

The Administration will provide written responses to the remaining questions as soon as possible.

Yours sincerely,

(Eugene Fung)
for Secretary for Transport and Housing

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

Responses to follow-up actions arising from the discussions at the meetings on 17 December 2010 and 21 December 2010

Introduction

At the meetings of the Bills Committee on the Stamp Duty (Amendment) (No.2) Bill 2010 (the Bills Committee) held on 17 December 2010 and 21 December 2010 respectively, Members raised a number of questions relating to the scope, operation and legal aspects of the proposed Special Stamp Duty (SSD), development of the property market, and experience of overseas jurisdictions in curbing speculation activities in the property market. This paper is a consolidated response of the Administration to some of these questions, with input from the Transport and Housing Bureau (THB), the Financial Services and Treasury Bureau, the Inland Revenue Department (IRD) and the Department of Justice (DoJ).

2. The Administration will provide written responses to the remaining questions as soon as possible.

(a) Other anti-speculative measures which the Government has considered, and any other measures which the Administration may consider introducing if the announced measures are not effective in curbing property speculation

3. The Government has been monitoring the development of the private residential property market closely and remains vigilant on the risk of formation of a property bubble. In February, April, August and October 2010, the Government introduced various measures in four areas to ensure the healthy and stable development of the property market. The four areas include increasing supply to tackle the problem at source, combating speculative activities, enhancing the transparency of property transactions, and preventing excessive expansion in mortgage lending. These measures are taking effect, but owing to extraordinary external factors, the private residential property market is still very exuberant. More worryingly, the exuberant state of the property market has spread to the mass market.

4. With the announcement by the US Federal Reserve on the launching of the second round of "quantitative easing" amounting to US$600 billion in November 2010, more funds are expected to flow to the emerging markets, including Hong Kong, given the strong economic fundamentals and absence of capital control here. The abundant liquidity and ultra-low interest rates will therefore continue for an extended period, and the risk of formation of a housing bubble has increased.

5. Taking into account these developments, the Government considers it necessary to introduce further measures to curb speculation, manage the risk of the formation of a property bubble and ensure the healthy and stable operation of the property market. To this end, the Financial Secretary announced new measures, including the introduction of the SSD, on 19 November 2010.

6. The Administration will continue to monitor the developments of the property market and will take further measures to curb speculation as necessary. It is inappropriate for the Administration to comment on what further measures it may take given the market sensitivity.

(b) The basis for the threshold of 24 months and the various regressive rates for SSD

7. The shorter the holding period before resale, the more likely the transaction is for speculative purpose. According to our statistics, there is a surge by 32% in the number of resale within 24 months in the first nine months of 2010 compared with the same period in 2009. Within this, the number of resale within 12 months surged by an even more rapid 114%, indicating a shift in speculative activities to a shorter horizon. We see an immediate need to impose SSD to increase the cost of short-term transactions and to deter such speculative activities. To forestall the spread of speculative activities to a horizon beyond 12 months, we also see a need to impose SSD but at a lower rate on resale between 12 and 24 months. We regard a 24 month duration where SSD is applicable as appropriate and should not affect genuine home buyers and long term investors, who are unlikely to sell their flats over a 24-month period of time.

(c) Whether the Government will consider only holding the seller liable for SSD

8. Stamp duty is a levy on instrument. Under the present Stamp Duty Ordinance (SDO), all the parties executing a chargeable instrument are jointly and severally liable to pay the stamp duty. This applies to the purchase and sale of properties and the leasing of properties. It is one of the fundamentals of the Hong Kong stamp duty regime and we consider that it should be upheld. The market is also familiar with such practice.

9. In the case of SSD, there are many choices in the residential property market, and buyers will make comparison before taking decision. We consider that for transactions on properties which have been held for shorter than 24 months, buyers and sellers will negotiate on which side should pay the stamp duty. While it has been the market practice for buyers to pay the current ad valorem stamp duty, this may not necessarily be the case upon the implementation of the SSD given that buyers can choose to buy properties which have been held for more than 24 months instead.

10. Under SDO, an instrument has to be duly stamped in order to be registered with the Land Registry. Even if we specify that the SSD is to be borne by the sellers, if the sellers do not pay the SSD, the buyers will have to pay the SSD in order to have the instrument registered with the Land Registry for protection of title. Therefore, specifying that the SSD should be borne by the sellers alone will not have much practical effect from the point of view of protecting the buyers. We consider there is merit in upholding the existing principle of holding all parties executing a chargeable instrument jointly and severally liable, given that this has worked well in practice in response to market conditions.

(d) Feasibility of including a sunset clause for SSD

11. If a sunset clause is to be included in the Bill, we need to specify a date for the SSD-related provisions to lapse. It is not possible for the Administration to pre-determine a date when the SSD is deemed no longer necessary to curb speculation. The Administration intends to go through the legislative process in a normal manner to amend the legislation when SSD is considered no longer necessary.

12. The Government will continue to closely monitor the development of the property market, and will take timely and appropriate measures as and when necessary to ensure the stable and healthy development of the market.

(e) To consider extending the scope of the Bill to cover commercial properties to deter the spread of speculative activities to the commercial sector

13. Part of the latest measures of the Hong Kong Monetary Authority (HKMA) announced on 19 November 2010 on tightening the loan-to-value (LTV) ratio of mortgage lending cover commercial/industrial premises or retail premises. Specifically, the maximum LTV ratio for all non-owner-occupied residential properties, properties held by a company and industrial and commercial properties has been lowered to 50%, regardless of property values.

14. While SSD is targeted at residential properties, the Government will continue to monitor the market closely and take further measures as necessary.

(f) Whether there is a question of double taxation if property transactions will be subject to both SSD and profits tax

15. SSD aims to increase the cost of short-term transactions in order to curb speculation in residential properties and is in addition to the current ad valorem property transaction stamp duty. In substance, stamp duty and profits tax are different levies. Unlike profits tax, stamp duty (including SSD) is not a tax on profits in nature. As far as SSD is concerned, SSD is payable on agreement for sale of residential properties in which the property is acquired by the vendor on or after 20 November 2010 and disposed of within 24 months after acquisition, regardless of whether there is a gain or loss on the transactions. On the other hand, profits tax is payable on profits derived from property transaction which amounts to a trade or a venture in the nature of trade with no definite holding period of the property by the vendor.

(g) Whether there is 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 is in session

16. We expect that the basket of measures which we are introducing will change market expectation. With diminished prospect for quick profits from speculating in Hong Kong properties, there will be less speculation by anyone, whether individuals, Hong Kong companies or foreign companies. IRD has been following up closely on property transactions entered in names of individuals or companies. IRD will continue to enforce the law and collect profits tax from these individuals and companies.

17. For sale and purchase of Hong Kong stocks, including shares of “property holding companies” registered in Hong Kong, both the seller and the buyer of Hong Kong stocks are liable to stamp duty based on the price paid (or the market value of the shares if the price paid are considered substantively below the market value). IRD has been actively tracking and taking follow-up actions on property speculation cases, including cases involving shares transfer of “property holding companies”, to ensure that profits derived from property speculation are duly taxed. When stamping the transfer of shares in private companies, IRD’s Stamp Office will refer suspected shares transfer cases of “property holding companies” to the Assessing Unit for review.

18. In the past, IRD did not collect information specifically on the sale and purchase of properties through shares transfer. Since April 2010, the Stamp Office has compiled statistics on those suspected speculation cases in the form of shares transfer of “property holding companies” and which the Stamp Office has referred to the Assessing Unit for follow-up actions. The statistics of those cases covering April to November 2010 are as follows:

Month/year	Number of cases
April 2010	30
May 2010	24
June 2010	30
July 2010	26
August 2010	24
September 2010	39
October 2010	17
November 2010	26

19. IRD will continue to collate the aforementioned statistics. The above statistics do not include property speculation cases involving shares transfer of "property holding companies" registered overseas, as transfers of those shares are not required to be stamped in Hong Kong.

(h) Other prudential risk management measures for mortgage lending which the Hong Kong Monetary Authority has considered.

20. As mortgage lending accounts for more than 30% of the banks' total loans in Hong Kong, the quality of mortgage loans is crucial to the stability of the banking system. The HKMA has always been closely monitoring the development of the property and mortgage lending markets, and will introduce appropriate prudential measures as necessary to safeguard banking stability.

21. With the exceptionally low interest rate policy and quantitative easing measures pursued by major economies, huge amount of excessive liquidity around the world has driven up asset prices in emerging markets. As such, the risk of formation of a property bubble has increased significantly. In order to protect banking stability, the HKMA has introduced a series of counter-cyclical prudential supervisory measures since October 2009 to tighten banks' underwriting criteria for mortgage loans and strengthen the risk management standards of banks. These measures include:

(i) reducing the maximum loan-to-value (LTV) ratio for residential properties with a value at or above $20 million from 70% to 60% in October 2009 (this measure was superseded by (iii) below);

(ii) setting the maximum LTV ratio for <u>non-owner-occupied properties and properties</u> with a value at or above $12 million at 60% (this measure was superseded by (vi) below) and standardising the maximum debt servicing ratio (DSR) for mortgage applicants at 50% in August 2010. Banks are also required to stress-test mortgage applicants' repayment ability, assuming an increase in mortgage rates of at least two percentage points, and limit the stressed DSR to 60%;

(iii) as announced on 19 November 2010, lowering the maximum LTV ratio for residential properties with a value at or above $12 million from 60% to 50%;

(iv) as announced on 19 November 2010,lowering the maximum LTV ratio for residential properties with a value at or above $8 million and below $12 million from 70% to 60%, but the maximum loan amount will be capped at $6 million;

(v) as announced on 19 November 2010, maintaining the maximum LTV ratio for residential properties with a value below $8 million at 70%, but the maximum loan amount will be capped at $4.8 million (i.e. a flat with an assessed value at or below $6.8 million may enjoy a maximum LTV ratio of 70%); and

(vi) as announced on 19 November 2010, lowering the maximum LTV ratio for all non-owner-occupied residential properties, properties held by a company and industrial and commercial properties to 50%, regardless of property values.

22. Guidelines had been issued to banks requiring them to take into account all the outstanding loans and debts held by mortgage loan applicants. As first-time home buyers will not have other outstanding mortgage loans, they will likely be more favourably assessed by banks on their debt repayment capability.

(i) Provision of assistance to genuine home buyers who have difficulties in securing mortgage as a result of the prudential risk management measures for mortgage lending and the prevailing mortgage policy of the Hong Kong Mortgage Corporation Limited in respect of private residential properties

23. The HKMA is mindful that the tightening of mortgage lending criteria will unavoidably affect homebuyers who may have limited financial resources. In introducing the prudential measures, the HKMA has strived to strike a balance as far as possible in order to minimise the impact on end users. As regards the measures announced on 19 November 2010, the maximum LTV ratio for properties with a value at or below $6.8 million was maintained at 70%, so as to avoid affecting those end users buying the more affordable flats. Also, the Mortgage Insurance Programme (MIP) of the Hong Kong Mortgage Corporation enables banks to provide mortgage loans with LTV ratio of up to 90% for properties valued at $6.8 million or below, and this will facilitate end-user home buyers to secure the mortgage loan for mass market flats.

(j) Experience in overseas jurisdictions in preventing property bubble

24. According to our research, the Australian Government has been implementing strict regulations on foreign investment in local residential properties, including requiring foreign non-residents of Australia to get prior approval from the relevant authorities before they can purchase a residential property. The Australian foreign investment policy regime is backed up by a combination of legislation, primarily the Foreign Acquisitions and Takeovers Act 1975 and its related regulations, the Foreign Acquisitions and Takeovers Regulations 1989, and an accompanying Government policy. The Australian Government tightened its policy on foreign investment in local residential properties in April 2010, by extending the “prior approval” requirement, which formerly applied to foreign non-residents only, to cover temporary residents. In addition, temporary residents who are approved to purchase second-hand residential real estate after that date must use the properties as residences during their stay in Australia and will have to compulsorily sell the established property when they depart Australia.

25. As the social and economic conditions of Hong Kong and Australia are different, it is not appropriate to make direct comparison.

Hong Kong has all along adopted the free market principle, and allowed free flow of capital and barrier-free investment. Restricting foreign investment in the residential property sector will have read-across implications and will affect Hong Kong's status as one of the freest market economies in the world.

(k) Timely release of information on the property market

26. The THB will continue to monitor the development of the private residential market and will compile and collate housing supply related statistics from relevant bureaux and departments and make public the information on a quarterly basis in THB's website. The information includes the number of private residential flats which commenced construction in a year, the number of flats completed in that year, and the estimated supply of private residential flats in the coming few years.

27. It will take time for the impact of the anti-speculative measures announced on 19 November 2010 to feed through. Data for the post-19 November 2010 transactions will only be available when the transactions are registered with the Land Registry. The Administration will furnish the Committee with the figures when available.

(l) Whether rents in the private residential property market will rise as a result of SSD

28. We believe the basket of measures that the Government has introduced, including the provision of more land for housing and the various anti-speculative measures will help stabilize the property market as a whole and enable its healthy development. Reportedly, some residential property owners or investors had turned to the rental market instead of offering their flats for sale in the aftermath of the announcement of the anti-speculative measures on 19 November 2010. There is no evidence at this stage showing that rents in the private residential property market have increased as a result of SSD.

(m) Consequential amendments to the Land Titles Ordinance (Cap. 585)

29. THB consulted the Building Unit of the Development Bureau (DevB) on the proposed consequential amendments to the Land Titles Ordinance. DevB has confirmed that it has no difficulty on our proposed consequential amendments.

Transport and Housing Bureau
Financial Services and Treasury Bureau
Inland Revenue Department
Department of Justice
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