

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

### Responses to follow-up actions arising from the discussion at the meeting on 9 February 2011

#### Introduction

At the meeting of the Bills Committee on the Stamp Duty (Amendment) (No.2) Bill 2010 (the Bills Committee) held on 9 February 2011, Members raised a number of questions relating to the property market and various aspects of the proposed Special Stamp Duty (SSD). We now provide the Administration's consolidated response to the 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).

- (a) **provide the number of resale transactions of commercial premises within 24 months in the first nine months of 2010 and the same period in 2009 as well as after the announcement of special stamp duty (SSD) on 19 November 2010**

2. For stamp duty purposes, the Stamp Office has categorized immovable properties into residential and non-residential premises. Non-residential premises include commercial premises, industrial premises and car parking spaces. According to the Stamp Office's record, the number of resale transactions within 24 months of non-residential premises in the first nine months of 2009, the first nine months of 2010, and from November 2010 to January 2011 are as below. The Stamp Office does not have breakdown on the various types of non-residential premises.

Period	Number of resale transactions of non-residential premises within 24 months	Total number of transactions of non-residential premises	Percentage to total number of transactions of non-residential premises
First nine months of 2009	3,386	13,162	25.7%
First nine months of 2010	5,254	19,242	27.3%
November 2010 to January 2011	2,296	8,203	28%

- (b) **provide a supplementary paper explaining why Mr James TO's previous Committee Stage amendment to the Stamp Duty (Amendment) Bill 2010 requiring confirmor to pay an additional stamp duty for a chargeable agreement for sub-sale was said to have the effect of double taxation while SSD under the Bill would not**

3. The Hon James TO proposed at the Bills Committee for the Stamp Duty (Amendment) Bill 2010 to introduce an additional stamp duty on the seller of subsale through confirmor. More often than not, confirmor transactions generate profits, which amounts to a trade or an adventure in the nature of trade, and will therefore be subject to profits tax. The suggestion to apply an additional stamp duty which was targeted specifically at subsale through confirmor was geared at profit-generating transactions. The reference to double taxation was made in a broad sense of the term in the Administration's letter of 7 June 2010, based on the fact that the proposed additional stamp duty would be imposed on the seller involved in the subsale who will also be liable to profits tax.

4. SSD aims to increase the cost of short-term transactions in order to curb speculation in residential properties. SSD is not a tax on profits in nature, and under the Stamp Duty (Amendment) (No. 2) Bill 2010, it is proposed that both the buyer and seller will be jointly and severally liable for paying the SSD, if 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 in the transactions.

- (c) **update the statistics on suspected speculation cases in the form of shares transfer of "property holding companies" until January 2011. To also consider the feasibility of putting in place a notification mechanism on shares transfer of "property holding companies" registered overseas**

5. For the 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 is 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.

6. Since April 2010, the Stamp Office of the IRD has been compiling 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 updated statistics of the Stamp Office as at 16 February 2011 on the number of suspected speculation cases for the period from April 2010 to January 2011 are as below:

Month/year	Number of suspected speculation cases in the form of shares transfer of “property holding companies”
April 2010	30
May 2010	24
June 2010	30
July 2010*	27
August 2010*	29
September 2010*	46
October 2010*	21
November 2010*	33
December 2010	38
January 2011	27

\*The numbers of cases for July 2010 to November 2010 shown in the table above are greater than the figures provided in the Bills Committee paper (CB(1) 984/10-11(01)) prepared in January 2011 because a few more cases were received after the paper was compiled.

7. IRD considers the suggestion to put in place a notification mechanism on shares transfer of “property holding companies” registered overseas requires very careful consideration, given the practical difficulties in identifying a person (who has knowledge of the transfer) to be held responsible for notification and in enforcing compliance with such duty or obligation.

**(d) provide actual figures of rents in the private market following the announcement of SSD**

8. According to the latest figures by the Rating and Valuation Department, the overall residential rental index remained the same in October 2010 and November 2010, and increased by 0.5% in December 2010 as compared to November 2010.

- (e) **seriously reconsider expanding the exceptions for SSD to include involuntary cases such as order of court, divorce, succession to estate, terminal illness etc.**

9. The Bill has proposed exemptions from payment of the SSD under various circumstances, including sale of residential properties due to bankruptcy or involuntary winding up.

10. We consider that it is very important that the law should be clear and without ambiguity, and any exemptions to be considered have to be fair and measurable in an objective manner, and the types of exemptions should be clearly set out in the Bill. Exemptions on a case by case basis in the light of individual or personal circumstances such as financial hardship will not be practicable for implementation and will undermine the effectiveness of the SSD.

- (f) **provide the number of Provisional Agreement for Sale and Purchase signed before the announcement of SSD on 19 November 2010**

11. The Government does not have comprehensive information on the total number of Preliminary Agreements for Sale and Purchase (PASPs) signed on and before 19 November 2010. This is because not each and every PASP is stamped with IRD and registered with the Land Registry. Under the Stamp Duty Ordinance (SDO), when an Agreement for Sale and Purchase (ASP) is signed within 14 days after the signing of the PASP, the ASP rather than the PASP should be submitted to IRD for stamping. It is only when an ASP is signed 14 days or more after the signing of the PASP will the PASP be submitted to IRD for stamping first, to be followed by the stamping of the ASP when ready. Given that the common market practice is that an ASP is usually executed within 14 days from the signing of the PASP to get the benefit of an extended period for stamping the ad valorem stamp duty, the number of PASPs stamped by IRD and registered with the Land Registry is not representative of the total number of PASPs signed.

12. With the caveat aforementioned, we have obtained from the Land Registry information on the number of registered PASPs which were signed on 17, 18 and 19 November 2010 respectively for Members' information, as below. Members should note that the actual number of PASPs signed on those three days should be greater than the figures below.

Signing date of the PASPs	Number of PASPs registered with the Land Registry
17 November 2010	110
18 November 2010	187
19 November 2010	242

(g) advise the existing ordinances other than revenue ordinances which had retrospective effect. To also elaborate the relevant sections and the controversies involved

13. The following are two examples of existing ordinances other than revenue ordinances which had retrospective effect. We are not aware of any controversies involved in respect of the passing of the amendment bills.

Ordinance	Amending sections in the Ordinance (and provisions amended)	Publication date of the Ordinance	Commencement date of the amending sections in the Ordinance
Societies (Amendment) (No. 3) Ordinance 1988 (71 of 1988)	Section 2 (amending item 6 of the Schedule to the Societies Ordinance)	22 July 1988	7 July 1978
	<b>Objective:</b> Section 1(2) of the Ordinance provides that section 2 shall be deemed to have come into operation on 7 July 1978. It excludes the application of the Societies Ordinance to large partnerships (i.e. partnerships of over 20 persons) registered under any other Ordinance with effect from the date when the Companies Ordinance was amended in 1978 to permit large partnerships in certain areas of business.		
Bankruptcy (Amendment) Ordinance 2005 (18 of 2005)	Section 1(4) (amending sections 12,19 & 32 of the Bankruptcy Ordinance)	15 July 2005	1 July 1997
	<b>Objective:</b> Section 1(4) of the Ordinance provides that "sections 12, 19 and 32 shall be deemed to have come into operation on 1 July 1997". Sections 12, 19 and 32 are amendments in relation to the adaptation of laws. Section 12 removes the reference to "imperial enactment" in section 38 of the Bankruptcy Ordinance, while sections 19 and 32 substitute "Governor" with "Chief Executive" in sections 75 and 91 of the Bankruptcy Ordinance.		

- (h) **advise the effects on the title of a property (including whether there was a charge on the property) if the property had been sold for say three times within a short time but only the last transaction had been properly stamped (including SSD)**

14. The Administration will provide response at a later stage.

- (i) **consider including in the Bill a presumption clause on speculation for resale within a specified period such that a person who had justifiable reason could apply to the Commissioner of Inland Revenue and the Board of Review where appropriate for exemption from payment of SSD**

15. The Inland Revenue Ordinance (IRO), SDO and the Estate Duty Ordinance (EDO) do not have any provision allowing the Commissioner of Inland Revenue to waive tax/duty on the ground of financial hardship or changes of circumstances of the taxpayers/duty payers. As explained in paragraph 10 above, to provide exemptions to cater for individual circumstances such as financial hardship is not practicable and will undermine the effectiveness of the SSD. We consider it is important that the law should be clear and concise, that any exemptions to be granted have to be fair and measurable in an objective manner, and that such exemptions should be set out in the Bill.

- (j) **Supplementary information on the number of resale within 12 months in the first nine months of 2010 and the same period in 2009**

16. For resale within 12 months, in the first nine months of 2010, there were 119 000 stamped ASPs of residential transactions, of which 12 400 were transactions of resale within 12 months (10.4% of all stamped ASPs). In the first nine months of 2009, there were 100 400 stamped ASPs of residential transactions, of which 5 800 were transactions of resale within 12 months (5.8% of all stamped ASPs).

17. The aforementioned figures show that the proportion of short term resale within 12 months is on a rising trend.

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