

Now withdraw the SSD proposal

2nd March 2011

After our [second submission](#) to LegCo on this subject, the Government has produced (some time in early February) [another paper](#) which was tabled at the meeting on 9-Feb-2011. In paragraph 2 of this paper, it finally discloses the actual number of "resales within 24 months" in the first 9 months of 2010. You will recall that the percentage increase in this number, compared with the first 9 months of 2009, was advanced by the Government as a reason for its proposals, and in our [first submission](#) we criticised the Government for being selective in its statistics.

The figures now disclosed are that there were 20,222 resales within 24 months in the first 9 months of 2010, which is only 19.5% of the 103,709 [transactions](#) in the same period. In the first 9 months of 2009, there were 15,357 such resales, which is 17.6% of the 87,471 [transactions](#) in that period. In other words, **the increase in what the Government calls "speculative activity" was only 1.9% of all transactions, or about 2,014 additional resales in the first 9 months of 2010 versus 2009.** That's about 1 out of every 51 transactions. The rest of the increase was purely a reflection of higher market volume.

Not all of those resales within 24 months were speculators, of course - some will be genuine home-owners who sold for various reasons, including moving up to a larger home, down to a smaller home, away from HK because of employment reassignment, or forced to sell due to financial difficulties.

As we said in our [second submission](#), if the Government cannot identify some significant harm to society caused by "speculation" in the market, then imposing a behaviour-modifying tax on short-term resales is not a legitimate tax protected by Article 105 of the Basic Law, and therefore amounts to an infringement of the right to dispose of property without penalty, protected by Article 108 of the Basic Law.

If the Government pushes ahead with this legislation, then they run the risk of a vendor seeking a judicial review of the SSD. If that review is successful, rendering the tax unconstitutional, then all the SSD payments up to that point would have to be refunded. This raises the possibility of chaos because, given that both sides of a transaction are jointly and severally liable for payment of the SSD, it will be unclear who should get the refund. Economically, the vendor will have suffered a lower net price because of the stamp duty, but to avoid paying "stamp on the stamp", this will have been conducted by means of a lower transaction price plus the SSD, paid by the purchaser. So the purchaser would be entitled to the refund, but the vendor would have suffered the economic loss.

Having abandoned one unpopular budget measure this week already (the transfer of HK\$24bn of reserves into MPF accounts), the Government should now do the right thing and abandon the Special Stamp Duty proposal. It is illegitimate, unconstitutional, creates too many unintended victims, and runs the risk of chaos upon a successful judicial review.