

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

**Administration's Response to Issues Raised by Members at the
Bills Committee on 24 March 2011**

Purpose

The paper informs Members of the Administration's response to issues raised by Members at the Bills Committee meeting on 24 March 2011.

Background

2. The Administration submitted to the Bills Committee on 23 March 2011 a set of revised draft Committee Stage Amendments (CSAs) (CB(1)1689/10-11(03)) on clarifying the definition of "acquisition" and "disposal of" properties, and on further exemptions.

3. Having considered the revised draft CSAs, Members requested the Administration to further consider the following:

- (a) to exempt involuntary sale by the "minority owners" under a Compulsory Sale Order granted under the Land (Compulsory Sale for Redevelopment) Ordinance (Cap 545);
- (b) not to apply the Special Stamp Duty (SSD) in the case of addition/deletion of names of brothers and sisters of the original purchaser to/from an Agreement for Sale and Purchase or Assignment; and
- (c) to set up an appeal mechanism to consider waiving payment of SSD for 'hardship cases', e.g. financial difficulties or serious illnesses.

4. The Administration has carefully considered the aforementioned suggestions. Our response is set out in the following paragraphs.

Government's Response to Issues Raised by Members

(a) To exempt involuntary sale by the "minority owners" under a Compulsory Sale Order granted under the Land (Compulsory Sale for Redevelopment) Ordinance (Cap 545)

5. As explained in our paper CB(1) 1689/10-11(03), the Administration cannot rule out the possibility of speculation in the sale of properties before a land lot is put to compulsory sale under a Compulsory Sale Order granted under Cap 545. Under the existing arrangements, both the majority and the minority owners involved in a compulsory sale application will have an opportunity to make representation to the Lands Tribunal on the draft conditions of sale to be prescribed in the compulsory sale order to be granted, including representations on who should pay the stamp duty and/or SSD. The proposed amendments to the Stamp Duty Ordinance (SDO) to introduce the SSD will not affect the power of the Lands Tribunal under section 4(6)(a)(i) of Cap 545 to give directions which include such directions as to the settling of the conditions of sale. The Development Bureau has put in place administrative measures and publicity programmes to inform owners of old buildings about their rights and protection under Cap 545 and has set up avenues to provide timely assistance and advice.

6. We have since discussed the issue further with the Development Bureau. The Development Bureau has pointed out that the existing mechanism for the Lands Tribunal to give directions on the conditions of sale under a compulsory sale order has been working well since Cap 545 came into operation. In all the past 24 cases where land lots were successfully sold under compulsory sale orders, the Lands Tribunal had directed that all stamp duties should be paid by the purchasers of the land lots. That said, the Development Bureau has taken careful and due regard of Members' views, and having regard to the Administration's overall policy direction that exemption has been proposed to be granted to involuntary sale or transfer of properties made by the courts or pursuant to court orders, it agrees to the extension of the exemption to cover also Cap 545 cases. It further considers that such exemption should be an outright exemption, covering both the majority owners and the minority owners involved, as the possibility that the majority owners are made up of individual small owners coming together to apply for a compulsory sale under Cap 545 cannot be ruled out. Not to exempt such sale of properties by these majority owners from SSD may discourage them to apply for compulsory sale under Cap 545 for redevelopment purposes.

(b) Not to apply SSD in the case of addition/deletion of names of brothers and sisters

7. As explained in our paper CB(1) 1689/10-11(03), SSD will not apply in the case of addition/deletion of name if the person is a spouse, parent or child of the original purchaser. This follows the same principle in the existing stamp duty regime that, as a tax avoidance measure, chargeable agreements or Assignments with names of purchasers added or deleted will be subject to ad valorem stamp duty except for cases when the person added or deleted is the spouse, parent or child of the original purchaser. As explained, we consider that it will create a big loophole for speculation if we depart from the existing tax avoidance regime and extend the exemption to cover, say, unmarried couples, other relatives and business partners.

8. We have taken note of Members' suggestion to include brothers and sisters in the exempted group. On the premises that the sale or transfer of properties amongst brothers and sisters are rarely speculative in nature and the relation is readily ascertainable, and that the impact and risk of abuse which should be low, we agree that SSD should not apply in the case of addition/deletion of name if the person is a brother or sister of the original purchaser.

9. By the same token, we propose that the nomination of brothers and sisters to take up assignment of a property and the resale or transfer of the property to brothers and sisters also be exempted from SSD.

(c) To set up an appeal mechanism to consider waiving payment of SSD for 'hardship cases'

10. Under the current Bill, we have proposed to grant exemptions to the disposal of residential properties acquired on or after 20 November 2010 and resold within 24 months or less under various specific circumstances, which include:

- (a) nomination of close relative, i.e. spouse, parent or child to take up the assignment of the property, and sale or transfer of the property to a close relative;

- (b) transfer between associated companies;
- (c) sale of property due to bankruptcy/involuntary winding up;
and
- (d) sale of property to the Government.

11. In addition, while the current Bill does not provide for exemptions to transactions of residential properties which are acquired on or after 20 November 2010 by a beneficiary of a deceased person and resold in 24 months or less, the Bill provides a concession that, for the purpose of counting the holding period of the property, the date of acquisition of the property by the deceased person will be deemed to be the date on which the beneficiary acquires the property.

12. As we have repeatedly emphasized, we consider that it is very important that the law should be clear and without ambiguity, and that any exemptions to be considered should not affect the effectiveness of SSD, and have to be fair and measurable in an objective manner, and the types of exemptions should be clearly set out in the Bill. Based on these principles, the Administration has carefully listened to and assessed Members proposals for additional exemptions, and have submitted revised draft CSAs to grant further exemptions under the following circumstances:

- (a) involuntary sale or transfer of properties made by the courts or pursuant to court orders. In respect of cases under Cap 545, we have sought Development Bureau's further views and now propose to grant an outright exemption to all such cases as well (paragraphs (5) and (6));
- (b) involuntary sale of mortgaged properties in various forms by a mortgagee which is a financial institution within the meaning of section 2 of the Inland Revenue Ordinance (Cap 112), or by a receiver appointed by such a mortgagee; and
- (c) sale or transfer of a residential property by a beneficiary whose property is inherited from a deceased person's estate.

13. In addition to the above, and as explained in paragraph 8, we now propose not to apply SSD in the case of addition/deletion of names

of brothers and sisters of the original purchaser to/from the Agreement for Sale and Purchase or Assignment. We also propose that the nomination of brothers and sisters to take up assignment of a property and the resale or transfer of the property to brothers and sisters be exempted from SSD (paragraph 9).

14. Based on the guiding principles as set out in paragraph 12, the Administration considers that the proposed exemptions, including the additional ones as set out in paragraphs 6, 8 and 9 have as far as possible addressed Members' views in this regard. We are not able to accept the proposal for setting up an appeal mechanism to assess and decide on the applicability of SSD on a case by case basis in the light of individual or personal circumstances such as financial hardship, as it is a fundamental deviation from the present taxation system where the Commissioner for Inland Revenue has no discretion to waive any types of tax payable. We also consider that the measure is not practicable and will likely create a big loophole for circumvention of SSD, thereby rendering it not effective.

Way Forward

15. We will submit further CSAs on the above proposals for Members' consideration as soon as possible.

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