

LEGISLATIVE COUNCIL BRIEF

Stamp Duty Ordinance (Chapter 117)

STAMP DUTY (AMENDMENT) (No.2) BILL 2010

INTRODUCTION

A At the meeting of the Executive Council on 30 November 2010, the Council ADVISED and the Chief Executive ORDERED that the Stamp Duty (Amendment) (No.2) Bill 2010 (“the Bill”) at **Annex A** be introduced into the Legislative Council (“LegCo”). The Bill aims to implement the stamp duty related proposals as approved by the Chief Executive-in-Council on 19 November 2010 and announced by the Financial Secretary on the same day. They include –

- (a) introducing, on top of the current ad valorem property transaction stamp duty, a Special Stamp Duty (“SSD”) on residential properties¹ of all values at the point of resale if the properties are acquired on or after 20 November 2010 and resold within 24 months after acquisition². The SSD payable will be calculated based on the stated consideration for the transaction or the market value of the property as assessed by the Collector of Stamp Revenue (i.e. the Commissioner of Inland Revenue), whichever is the higher, at the following regressive rates for different holding periods –
 - (i) 15% if the property has been held for six months or less;
 - (ii) 10% if the property has been held for more than six months but for 12 months or less; and

1 Under section 29A of the Stamp Duty Ordinance, residential property means immovable property other than non-residential property. For practical purposes, “residential property” means any immovable property which may be used wholly or partly for residential purposes. A carparking space assigned by itself is not a residential property but a carparking space assigned together with a residential unit is a residential property.

2 To determine when a person acquires a residential property for SSD purpose, he is regarded as acquiring a residential property when equitable ownership or legal ownership of the property is passed to the person (whichever occurs first).

- (iii) 5% if the property has been held for more than 12 months but for 24 months or less;
- (b) disallowing deferred payment of the current ad valorem property transaction stamp duty for all residential property transactions valued at \$20 million or below.

JUSTIFICATIONS

2. There are increasing signs of exuberance in the local residential property market. It also appears that the market exuberance has spread from the luxury market to the mass market. As a result of the second round of quantitative easing measures announced by the US Federal Reserve, we expect that there will be more capital flowing into Asia, including Hong Kong, thereby making the property market more exuberant. It is necessary for the Government to introduce further measures to reduce the risk of a property bubble.

3. The objectives of the proposed new measures are to curb short-term speculative activities by substantially increasing the costs to speculators, reduce the risk of the development of an asset bubble and ensure the healthy and stable operation of the property market. At the same time, genuine home buyers and long term investors should not be affected by those measures.

4. The SSD will cover the resale of residential properties acquired on or after 20 November 2010 and resold within 24 months after acquisition in any manner including confirmor transactions³, subject to various exemptions⁴. Both the seller and the buyer, be it an individual or a company (listed or unlisted, and wherever incorporated), will be held jointly and severally liable for the SSD. Any person who fails to pay the SSD by

3 With effect from 13 August 2010, confirmor transactions for first-hand uncompleted residential properties approved for pre-sale under the Lands Department's Consent Scheme are not allowed.

4 We propose to grant exemptions to the following, namely nomination of a close relative (i.e. spouse, parent and child) to take up the assignment of the property and resale or transfer of the property to close relatives, transfers between associated companies, sale of properties due to bankruptcy/involuntary winding up, and sale of properties to the Government. If a beneficiary of a deceased person's estate inherits any residential property from the deceased person, for the purpose of counting the holding period, we propose to treat the date of acquisition of the property by the deceased person as the date on which the beneficiary acquires the property. Under the existing Ordinance, stamp duty is not payable under certain circumstances for transfers to the Government, transfers between associated companies, transfers of the properties of deceased persons by will or by law to the beneficiaries and nominations of close relatives to take up the assignment.

the deadline for payment shall be liable to penalties up to 10 times the amount of the SSD payable and any unpaid SSD shall become a civil debt due to the Collector of Stamp Revenue. Evasion of SSD by fraudulent practices shall be a criminal offence, same as for normal stamp duty under the existing Stamp Duty Ordinance (“Ordinance”).

5. Before the coming into effect of the new law, Inland Revenue Department (“IRD”) will record all the residential property transactions between 20 November 2010 and the date of coming into effect of the new law to identify the cases liable for SSD. Demand notes on SSD will then be issued after the new legislation is enacted.

6. To further target speculators, we propose to disallow deferred payment of stamp duty for all residential property transactions valued at \$20 million or below. This will mean that all residential property transactions regardless of values will have to pay stamp duty within 30 days after the signing of the Agreement for Sale and Purchase, as we have already disallowed deferred payment of stamp duty for residential property transactions valued more than \$20 million with effect from 1 April 2010.

OTHER OPTIONS

7. The aforementioned proposals cannot be implemented without legislative amendments to the Ordinance. There are no other options.

THE BILL

8. The provisions of the Stamp Duty (Amendment) (No.2) Bill 2010 are as follows –

- (a) **Clause 1** provides for the short title and commencement. The amendments relating to special stamp duty will come into operation retrospectively from 20 November 2010.
- (b) **Clause 3** adds a new definition of *special stamp duty*.
- (c) **Clauses 4, 7(1) to (9), 9, 11 and 12** amend sections 9, 29C, 29D, 29H and 45 of the Ordinance to extend the application of those sections, which are currently applicable to conveyances on sale or

agreements for sale chargeable with ad valorem stamp duty, to conveyances on sale or agreements for sale chargeable with SSD.

- (d) **Clause 7(10) and (11)** amends section 29C of the Ordinance to cancel the existing provisions providing for the deferral of payment of stamp duty chargeable with an agreement for sale made in respect of certain residential property, and to make a transitional provision for the cancellation.
- (e) **Clause 8** adds a new section 29CA to impose, subject to certain exceptions, SSD on an agreement for sale made in respect of any residential property that is –
 - (i) acquired by the vendor under the agreement on or after 20 November 2010; and
 - (ii) disposed of by that vendor within a period of 24 months beginning on the day of that acquisition.
- (f) **Clause 10** adds a new section 29DA to impose, subject to certain exceptions, SSD on a conveyance on sale made in respect of any residential property that is –
 - (i) acquired by the transferor under the conveyance on or after 20 November 2010; and
 - (ii) disposed of by that transferor within a period of 24 months beginning on the day of that acquisition.
- (g) **Clause 13** adds a new section 68 to provide for a transitional arrangement as regards SDD which, but for that section, would have been payable before the enactment of the Bill.
- (h) **Clause 14** amends the First Schedule to the Ordinance to specify the rate of SSD chargeable with a conveyance on sale and an agreement for sale of residential property, the time for stamping and the persons who are liable to pay SSD.
- (i) **Clause 16** amends the Schedule to the Stamp Duty (Specification of Instruments) Notice (Cap. 117 sub. leg. B) to allow payment of special stamp duty through electronic stamping.

LEGISLATIVE TIMETABLE

9. The legislative timetable will be as follows –

Publication in the Gazette	3 December 2010
First Reading and commencement of Second Reading debate	8 December 2010
Resumption of Second Reading debate, committee stage and Third Reading	To be notified

IMPLICATIONS OF THE PROPOSAL

10. The proposed legislative amendments will not affect the current binding effect of the Ordinance. The proposal is in conformity with the Basic Law, including provisions concerning human rights. The economic, financial, civil service, environmental and sustainability implications of the proposal are set out at **Annex B**.

B

PUBLIC CONSULTATION

11. We briefed the LegCo Panel on Housing and the Panel on Financial Affairs at a joint meeting on 22 November 2010. Members generally supported the proposals for introducing the SSD and disallowing deferred payment of stamp duty. They also commented on certain operational details of the SSD.

PUBLICITY

12. A press release on the Bill will be issued on 1 December 2010.

ENQUIRIES

13. Enquiries on this Brief should be directed to Mr Eugene Fung, Principal Assistant Secretary for Transport and Housing (Housing) (Private Housing) at 2761 5094.

Transport and Housing Bureau
1 December 2010

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A BILL

To

Amend the Stamp Duty Ordinance to impose a special stamp duty on certain transactions of residential property if those transactions occur within 24 months after the property has been acquired, and to cancel the existing arrangements under the Ordinance for the deferral of payment of stamp duty chargeable with certain agreements for sale of residential property.

Enacted by the Legislative Council.

Part 1

Preliminary

1. Short title and commencement

- (1) This Ordinance may be cited as the Stamp Duty (Amendment) (No. 2) Ordinance 2010.
- (2) Subject to subsection (3), this Ordinance is deemed to have come into operation on 20 November 2010.
- (3) Sections 5, 7(10) and (11), 17 and 18 come into operation on the day on which this Ordinance is published in the Gazette.

Part 2

Amendments to Stamp Duty Ordinance

2. Stamp Duty Ordinance amended

The Stamp Duty Ordinance (Cap. 117) is amended as set out in sections 3 to 14.

3. Section 2 amended (Interpretation)

- (1) Section 2(1), definition of *stamp duty*, after “Ordinance”—
Add
“and includes additional stamp duty chargeable under section 13(10) and special stamp duty”.
- (2) Section 2(1), after definition of *recognized stock market*—
Add
“*special stamp duty* (額外印花稅) means special stamp duty chargeable under head 1(IAA) or (1B) in the First Schedule;”.

4. Section 9 amended (Late stamping)

Section 9(1), before “before or within”—

Add

“under section 5(1)”.

5. Section 15 amended (Non-admissibility, etc. of instruments not duly stamped)

- (1) Section 15(3)(a)—
Repeal
“or is endorsed under section 29C(13)(a)”.
- (2) After section 15(4)—

Add

“(5) The amendment made by section 5(1) of the Stamp Duty (Amendment) (No. 2) Ordinance 2010 (of 2010) (*amending section*) does not apply in respect of a chargeable agreement for sale within the meaning of section 29A(1) that was entered into before the date of commencement of the amending section, and subsection (3)(a) as in force immediately before that date applies to the agreement as if that amendment had not been made.”.

6. Section 18A amended (Fraction of \$1 reckoned as \$1)

Section 18A—

Repeal

“, additional stamp duty”.

7. Section 29C amended (Chargeable agreements for sale)

(1) Section 29C—

Repeal subsection (2)**Substitute**

“(2) A chargeable agreement for sale is chargeable with stamp duty even if—

- (a) it does not contain the matters specified in section 29B(5); or
- (b) it has not been executed by all persons who are required by section 29B(1) to execute it,

or both, but the Collector may refuse to stamp the agreement.”.

(2) Section 29C(3)—

Repeal

everything after “head 1(1A)”

Substitute

“and (1B) in the First Schedule and to section 29F) each agreement is chargeable with stamp duty.”.

(3) Section 29C(4)—

Repeal

everything after “head 1(1A)”

Substitute

“and (1B) in the First Schedule and to section 29F) each agreement is chargeable with stamp duty.”.

(4) Section 29C(5)—

Repeal

“section 29D(4) or (5)”

Substitute

“sections 29D(4) or (5) and 29DA(4) or (5)”.

(5) Section 29C(5A)(a), after “head 1(1A)”—

Add

“or (1B)”.

(6) Section 29C(5A)(b)—

Repeal

everything after “subsection”

Substitute

“(5AA), despite paragraph (a), the agreement continues to be regarded as an agreement for sale to which head 1(1A) and (1B) in the First Schedule applies.”.

(7) After section 29C(5A)—

Add

“(5AA) In relation to an agreement for sale made in respect of any residential property (*first agreement*), there is occurrence of a specified event if—

- (a) another agreement for sale is made by the purchaser under the first agreement in which the purchaser makes a nomination or gives a direction that—
- (i) transfers, or gives a power to transfer, any benefit of the purchaser in respect of the property or any part of the property under the first agreement; or
 - (ii) authorizes another person to take a conveyance of the property or any part of the property or to execute such a conveyance in favour of a third party,

other than a nomination made, or a direction given, in favour of a person who is to be a trustee for the purchaser in respect of the property or the part of the property, or in favour of a person who is a parent, spouse or child of the purchaser, whether or not also in favour of the purchaser; or

- (b) another agreement for sale is made for the sale of the property or any part of the property—
- (i) between the vendor under the first agreement and a party introduced, directly or indirectly, to the vendor by the purchaser under the first agreement; or
 - (ii) under the direction of or upon the request of the purchaser.”.

- (8) Section 29C(5B)—

Repeal paragraph (a)

Substitute

- “(a) Subject to paragraph (b), if any monies have been paid under this Ordinance, whether by way of stamp duty or penalty, in respect of an agreement for sale as an agreement for sale to which head 1(1A) or (1B) in the

First Schedule applies, but the agreement is under subsection (5A)(a) not regarded as an agreement for sale to which that head applies, the Collector must refund the monies paid.”.

- (9) Section 29C(10)—

Repeal

“for the consideration”.

- (10) Section 29C—

Repeal subsections (11), (12) and (13).

- (11) At the end of section 29C—

Add

“(16) The amendments made by section 7(10) of the Stamp Duty (Amendment) (No. 2) Ordinance 2010 (of 2010) do not apply in respect of a chargeable agreement for sale that was entered into before the date of commencement of that section, and subsections (11), (12) and (13) as in force immediately before that date apply to the agreement as if those amendments had not been made.”.

8. Section 29CA added

After section 29C—

Add

“29CA. Special stamp duty chargeable with certain agreements for sale

- (1) Head 1(1B) in the First Schedule applies to a chargeable agreement for sale of any residential property acquired on or after 20 November 2010 by the vendor under the agreement.
- (2) A chargeable agreement for sale is chargeable with special stamp duty under head 1(1B) in the First

Schedule if the residential property concerned is disposed of within a period of 24 months beginning on the day on which the vendor under the agreement acquired the property.

- (3) If only part of the residential property is acquired within the 24-month period, special stamp duty is chargeable only by reference to that part.
- (4) For the purposes of this section and head 1(1B) in the First Schedule, and subject to subsection (5), a person acquires any residential property when equitable ownership or legal ownership of the property is passed to the person (whichever occurs first).
- (5) If a person acquires any residential property under a will, the law of intestacy or right of survivorship, the date of acquisition by the person is the date on which the deceased person concerned acquired the property.
- (6) For the purposes of this section and head 1(1B) in the First Schedule, a person disposes of any residential property when equitable ownership or legal ownership of the property passes from the person to another person (whichever occurs first).
- (7) Head 1(1B) in the First Schedule does not apply to a chargeable agreement for sale if the purchaser under the agreement is a parent, spouse or child of the vendor under the agreement.
- (8) Head 1(1B) in the First Schedule does not apply to a chargeable agreement for sale if the residential property in respect of which the agreement is made relates solely to—
 - (a) a bankrupt's estate; or
 - (b) the property of a company which is being wound up by the Court of First Instance under section 177(1)(d) of the Companies Ordinance (Cap. 32).

- (9) The special stamp duty chargeable with a chargeable agreement for sale under head 1(1B) in the First Schedule is in addition to any other stamp duty with which the agreement is chargeable.
- (10) If an instrument is not chargeable with stamp duty under head 1(1A) in the First Schedule, it is not chargeable with special stamp duty under head 1(1B) in that Schedule.”.

9. Section 29D amended (Conveyances on sale of residential property)

- (1) Section 29D(2)(b)(i), after “head 1(1)”—

Add

“and (if applicable) (1AA)”.

- (2) Section 29D(3)(a), after “head 1(1)”—

Add

“and (if applicable) (1AA)”.

- (3) Section 29D(3)(b), after “head 1(1)”—

Add

“and (if applicable) (1AA)”.

- (4) Section 29D(4)(b)—

Repeal subparagraph (i)

Substitute

“(i) the Collector may refuse to stamp the conveyance.”.

- (5) Section 29D(5)(b)—

Repeal subparagraph (i)

Substitute

“(i) the Collector may refuse to stamp the conveyance.”.

10. Section 29DA added

After section 29D—

Add**“29DA. Special stamp duty chargeable with certain conveyances on sale**

- (1) Head 1(1AA) in the First Schedule applies to a conveyance on sale of any residential property acquired on or after 20 November 2010 by the transferor under the conveyance.
- (2) A conveyance on sale is chargeable with special stamp duty under head 1(1AA) in the First Schedule if the residential property concerned is disposed of within a period of 24 months beginning on the day on which the transferor under the conveyance acquired the property.
- (3) If only part of the residential property is acquired within the 24-month period, special stamp duty is chargeable only by reference to that part.
- (4) If a conveyance on sale of residential property is executed in pursuance of a chargeable agreement for sale within 24 months after the date of the agreement, and is in favour of a person named in the agreement as the purchaser and another person who is not so named, then—
 - (a) if the agreement is duly stamped, the conveyance is chargeable with special stamp duty under head 1(1AA) in the First Schedule, less a fraction of the special stamp duty representing the proportion of the property that is vested in the person named in the agreement as the purchaser; or
 - (b) if the agreement is not so stamped, the Collector may refuse to stamp the conveyance.

- (5) If a conveyance on sale of residential property is executed in pursuance of a chargeable agreement for sale within 24 months after the date of the agreement, and is in favour of one or some (but not all) of the persons named in the agreement as the purchaser or purchasers, then—
 - (a) if the agreement is duly stamped, the conveyance is chargeable with special stamp duty under head 1(1AA) in the First Schedule, less a fraction of the special stamp duty representing the proportion of the property that, according to the agreement, was to be conveyed to the person or persons in whose favour the conveyance was executed; or
 - (b) if the agreement is not so stamped, the Collector may refuse to stamp the conveyance.
- (6) For the purposes of the calculation of special stamp duty chargeable under subsections (4) and (5)—
 - (a) the residential property is deemed to have been acquired at the date of the agreement and disposed of at the date of the conveyance;
 - (b) joint tenants are treated as having equal undivided shares in the residential property.
- (7) For the purposes of this section and head 1(1AA) in the First Schedule, and subject to subsection (8), a person acquires any residential property when equitable ownership or legal ownership of the property is passed to the person (whichever occurs first).
- (8) If a person acquires any residential property under a will, the law of intestacy or right of survivorship, the date of acquisition by the person is the date on which the deceased person concerned acquired the property.
- (9) For the purposes of this section and head 1(1AA) in the First Schedule, a person disposes of any residential property when equitable ownership or legal ownership

of the property passes from the person to another person (whichever occurs first).

- (10) Head 1(1AA) in the First Schedule does not apply to a conveyance on sale if the person to whom the residential property is vested or transferred under the conveyance is a parent, spouse or child of the transferor under the conveyance.
- (11) Head 1(1AA) in the First Schedule does not apply to a conveyance on sale if the residential property in respect of which the conveyance is made relates solely to—
- (a) a bankrupt's estate; or
 - (b) the property of a company which is being wound up by the Court of First Instance under section 177(1)(d) of the Companies Ordinance (Cap. 32).
- (12) The special stamp duty chargeable with a conveyance on sale under head 1(1AA) in the First Schedule is in addition to any other stamp duty with which the conveyance is chargeable.
- (13) If an instrument is not chargeable with stamp duty under head 1(1) in the First Schedule, it is not chargeable with special stamp duty under head 1(1AA) in that Schedule.
- (14) In this section—
- transferor* (轉讓方), in relation to a conveyance on sale of residential property, means the person from whom the property is transferred or divested under the conveyance.”.

11. Section 29H amended (Exemptions and relief)

Section 29H(3)(a), after “head 1(1A)”—

Add

“and (1B)”.

12. Section 45 amended (Relief in case of conveyance from one associated body corporate to another)

Section 45(1), after “1(1),”—

Add

“1(1AA),”.

13. Section 68 added

Before the First Schedule—

Add

“68. Transitional provision for Stamp Duty (Amendment) (No. 2) Ordinance 2010

If, but for this section, the time for stamping of any instrument chargeable with special stamp duty falls before the day on which the Stamp Duty (Amendment) (No. 2) Ordinance 2010 (of 2010) was published in the Gazette, that time for stamping is to be replaced by a period of 30 days commencing immediately after that day.”.

14. First Schedule amended

(1) First Schedule—

Repeal

“[ss. 4, 5, 5A, 19, 20, 29, 29A, 29C, 29D, 29G, 29H, 29I, 30, 45 & 47B]”

Substitute

“[ss. 2, 4, 5, 5A, 13, 18D, 19, 19A, 20, 29, 29A, 29C, 29CA, 29D, 29DA, 29G, 29H, 30, 44, 45 & 47B & 2nd Sch.]”.

(2) First Schedule, after head 1(1)—

Add

“(1AA) CONVEYANCE ON SALE
CHARGEABLE WITH

SPECIAL STAMP DUTY

- (a) if the residential property is disposed of within a period of 6 months beginning on the day on which it was acquired
- (b) if the residential property is disposed of within a period of 12 months beginning on the day on which it was acquired, but after the expiry of a period of 6 months beginning on that day
- (c) if the residential property is disposed of within a period of 24 months beginning on the day on which it was acquired, but after the expiry of a period of 12 months beginning on that day
- (A) (a) 15% of the amount or value of the consideration
- (b) 10% of the amount or value of the consideration
- (c) 5% of the amount or value of the consideration
- (B) The same time as that which applies to a conveyance on sale specified under sub-head (1)
- (C) The same parties as those who are liable in respect of a conveyance on sale specified under sub-head (1)".

Note 1

This sub-head is subject to section 29DA

Note 2

- (a) If only part of the residential property is disposed of within a period specified in the first column of this sub-head, the special stamp duty chargeable under this sub-head is the percentage (specified opposite to that period) of the amount or value of the consideration for that part as indicated by the parties to the conveyance concerned to the Collector (*part consideration*)
- (b) If different parts of the residential property are disposed of within different periods specified in the first column of this sub-head, the special stamp duty chargeable with any of those parts under this sub-head is the percentage (specified opposite to the period applicable to that part) of the amount or value of the consideration for that part as indicated by the parties to the conveyance concerned to the Collector (*part consideration*), and the special stamp duty

chargeable with the property under this sub-head is the total of the special stamp duty chargeable with those parts

- (c) If the Collector is of the opinion that the part consideration does not represent the value of the part concerned, the Collector may substitute that value for the part consideration for the purpose of the calculation of special stamp duty chargeable under this sub-head

Note 3

Notes 2, 3 and 4 to head 1(1) apply to special stamp duty chargeable under this sub-head as they apply to stamp duty chargeable under head 1(1)

- (3) First Schedule, after head 1(1A)—

Add

“(1B) AGREEMENT FOR SALE CHARGEABLE WITH SPECIAL STAMP DUTY

- (a) if the residential property is disposed of within a period of 6 months beginning on the day on which it was acquired
- (b) if the residential property is disposed of within a period

- (A) (a) 15% of the amount or value of the consideration
- (b) 10% of the amount or

of 12 months beginning on the day on which it was acquired, but after the expiry of a period of 6 months beginning on that day

- (c) if the residential property is disposed of within a period of 24 months beginning on the day on which it was acquired, but after the expiry of a period of 12 months beginning on that day

value of the consideration

- (c) 5% of the amount or value of the consideration

- (B) The same time as that which applies to an agreement for sale specified under sub-head (1A)

- (C) The same parties as those who are liable in respect of an agreement for sale specified under sub-head (1A)”.

Note 1

This sub-head is subject to section 29CA

Note 2

- (a) If only part of the residential property is disposed of within a period specified in the first column of this sub-head, the special stamp duty

chargeable under this sub-head is the percentage (specified opposite to that period) of the amount or value of the consideration for that part as indicated by the parties to the agreement concerned to the Collector (*part consideration*)

- (b) If different parts of the residential property are disposed of within different periods specified in the first column of this sub-head, the special stamp duty chargeable with any of those parts under this sub-head is the percentage (specified opposite to the period applicable to that part) of the amount or value of the consideration for that part as indicated by the parties to the agreement concerned to the Collector (*part consideration*), and the special stamp duty chargeable with the property under this sub-head is the total of the special stamp duty chargeable with those parts
- (c) If the Collector is of the opinion that the part consideration does not

represent the value of the part concerned, the Collector may substitute that value for the part consideration for the purpose of the calculation of special stamp duty chargeable under this sub-head

Note 3

The Notes to head 1(1A) apply to special stamp duty chargeable under this sub-head as they apply to stamp duty chargeable under head 1(1A)

Part 3**Amendments to Stamp Duty (Specification of Instruments) Notice****15. Stamp Duty (Specification of Instruments) Notice amended**

The Stamp Duty (Specification of Instruments) Notice (Cap. 117 sub. leg. B) is amended as set out in section 16.

16. Schedule amended (Specification of instruments)

(1) The Schedule, Part 1, item 1, after “head 1(1)”—

Add

“or (1AA)”.

(2) The Schedule, Part 1, item 2, after “head 1(1A)”—

Add

“or (1B)”.

Part 4**Consequential Amendment****17. Land Titles Ordinance amended**

The Land Titles Ordinance (Cap. 585) is amended as set out in section 18.

18. Schedule 3 amended (Consequential amendments)

Schedule 3, section 41(b), new section 15(3)(aa)(ii)—

Repeal

“or is endorsed under section 29C(13)(a)”.

Explanatory Memorandum

The object of this Bill is to amend the Stamp Duty Ordinance (Cap. 117) (*the Ordinance*) to impose a special stamp duty chargeable with an agreement for sale or a conveyance on sale of any residential property if the property has been acquired by the vendor under the agreement or the transferor under the conveyance for 24 months or less. The Bill also cancels the existing arrangements under the Ordinance for the deferral of payment of stamp duty chargeable with certain agreements for sale of residential property.

2. Clause 1 sets out the short title and provides for commencement.
3. Clause 3 adds a new definition of *special stamp duty*.
4. Clauses 4, 7(1) to (9), 9, 11 and 12 amend sections 9, 29C, 29D, 29H and 45 of the Ordinance to extend the application of those sections, which are currently applicable to conveyances on sale or agreements for sale chargeable with stamp duty under head 1(1) or (1A) in the First Schedule to the Ordinance, to conveyances on sale or agreements for sale chargeable with special stamp duty under head 1(1AA) or (1B) in that Schedule.
5. Clause 7(10) and (11) amends section 29C of the Ordinance to cancel the existing provisions providing for the deferral of payment of stamp duty chargeable with an agreement for sale made in respect of certain residential property, and to make a transitional provision for the cancellation.
6. Clause 8 adds a new section 29CA to impose, subject to certain exceptions, special stamp duty on an agreement for sale made in respect of any residential property that is—
 - (a) acquired by the vendor under the agreement on or after 20 November 2010; and
 - (b) disposed of by that vendor within a period of 24 months beginning on the day of that acquisition.

7. Clause 10 adds a new section 29DA to impose, subject to certain exceptions, special stamp duty on a conveyance on sale made in respect of any residential property that is—
 - (a) acquired by the transferor under the conveyance on or after 20 November 2010; and
 - (b) disposed of by that transferor within a period of 24 months beginning on the day of that acquisition.
8. Clause 13 adds a new section 68 to provide for a transitional arrangement as regards special stamp duty which, but for that section, would have been payable before the enactment of the Bill.
9. Clause 14 amends the First Schedule to the Ordinance to specify the rate of special stamp duty chargeable with a conveyance on sale and an agreement for sale of residential property, the time for stamping and the persons who are liable to pay special stamp duty.
10. Clause 16 amends the Schedule to the Stamp Duty (Specification of Instruments) Notice (Cap. 117 sub. leg. B) to allow payment of special stamp duty through electronic stamping.

Implications of the Proposal

Financial and civil service implications

The proposed SSD is estimated to bring about additional revenue, but the amount cannot be worked out as it will depend on the number of short-term resale of residential properties. The proposal to disallow deferred payment of stamp duty for all residential property transactions will be revenue-neutral. Additional workload and administrative cost arising from the implementation of the proposal will be absorbed within the existing resources of the relevant departments.

Economic implications

The SSD measure will substantially increase the frictional costs of speculative activities, and should be effective in reducing such activities by a significant degree. Overall, the package of measures should forestall a further build-up in housing market exuberance and lessen the risk of more painful and protracted adjustments if the housing bubble is allowed to grow to an unmanageable scale under the exceptional boost of liquidity flush around the globe.

Environmental implications

The measures will not have environmental implications.

Sustainability implications

The measures aim to curb speculation, manage the risk of the development of a property bubble and ensure the healthy and stable development of the property market. A healthy and stable property market is crucial to the sustainable development of Hong Kong as a whole.