

LEGISLATIVE COUNCIL BRIEF

Amendments to the Stamp Duty Ordinance to curb speculation in residential properties

INTRODUCTION

At the meeting of the Executive Council on 19 November 2010, the Council ADVISED and the Chief Executive ORDERED that approval be given to amend the Stamp Duty Ordinance (Cap. 117) (“the Ordinance”) to implement the following proposals to curb speculation in residential properties –

- (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 acquisition. 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
 - (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.

¹ Under section 29A of the Stamp Duty Ordinance, residential property means immovable property other than non-residential property.

JUSTIFICATIONS

2. The Government has been monitoring the development of the private residential property market closely and remains vigilant on the risks of a property bubble. In February, April, August and October 2010, the Government introduced various measures in four areas² to ensure the healthy and stable development of the property market. These included setting the target of ensuring that in the next 10 years there would be land made available for provision of an average of about 20 000 private residential flats and about 15 000 public rental housing flats, increasing the supply of small and medium sized flats through various means, increased the stamp duty for property transactions valued more than \$20 million from 3.75% to 4.25%, disallowed deferred payment of stamp duty for residential property transactions valued more than \$20 million, disallowed confirmor transactions for first-hand uncompleted flats approved for pre-sale on or after 13 August 2010, introduced the “nine new measures” for enhanced transparency on sales brochures, price lists, show flats and transaction information, set up the Steering Committee to discuss specific issues on regulating the sale of first-hand private residential properties by legislation and come up with practical recommendations by October 2011, applied a maximum loan-to-value (“LTV”) ratio of 60% to properties valued at or above \$12 million, and standardized the limit on debt servicing ratios (“DSRs”) of mortgage applicants to 50% and with a stress test cap at 60% DSRs. The Government undertook to introduce further measures when necessary.

3. The measures introduced previously are taking effect, but owing to extraordinary external factors, the private residential property market is still very exuberant. Overall flat prices in September 2010 have risen by 15% over December 2009, equivalent to a hefty increase of 22% over the 2008 peak. In September 2010, overall flat prices were merely 11% below the 1997 peak, and prices for large flats (larger than 100 square metre in saleable area) were already 10% higher. The number of transactions in the third quarter of 2010 was the second highest since 1998. Also, the mortgage-to-income ratio³ rose to about 42% in the

² 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.

³ It is the ratio of mortgage repayment for a flat of 45 square metre in saleable area to the median income of households.

third quarter of 2010, and would come even closer to the long-term average of 53% for the past 20 years should interest rates return to more normal levels.

4. More worryingly, the exuberant state of the property market has spread to the mass market. Prices of mass market flats (i.e. flats smaller than 70 square metre in saleable area) increased by 8.1% between March and September 2010, which is higher than the 6.1% increase for large flats. In the first nine months of 2010, the number of secondary market transactions for mass market flats surged by 17%, whereas those for luxury flats fell by 4%.

5. The current property boom is fuelled by a heavy element of speculative activities, as suggested by the 32% surge in the number of resale within 24 months in the first nine months of 2010 as compared with the same period in 2009. Within the total, the number of resale within 12 months surged by an even more rapid 114%, indicating a shift in speculative activities to a shorter horizon. Also, there is a higher incidence of short-term resales in the lower end market, with 84% of the short-term resale within 12 months in the first half of 2010 being transactions below \$3 million.

6. With the announcement by the US Federal Reserve on the launching of the second round of “quantitative easing” amounting to US\$600 billion on 3 November 2010, more funds are expected to flow to the emerging markets, in particular Hong Kong, given the strong economic fundamentals and absence of capital control here. The abundant liquidity and ultra-low interest rates will thus continue for an extended period, and the risk of a housing bubble has thus intensified further.

7. Taking into account these developments, we consider it necessary to introduce further measures, including special stamp duty on the sale of residential properties within 24 months after acquisition, to curb speculation, manage the risk of the development of property bubble and ensure the healthy and stable operation of the property market.

THE PROPOSALS

Introduction of the SSD

8. Currently, ad valorem stamp duty is levied on property transactions, for which both the buyer and the seller of a property are held jointly and severally liable. The existing stamp duty rates are set out at **Annex A**. We propose to introduce, on top of the current ad valorem stamp duty, a new SSD at the rates as shown in paragraph 1 (a) above on the transfer of ownership of residential properties of all values at the point of resale if the properties are acquired on or after 20 November 2010 and are resold in any manner including confirmor transactions⁴, subject to the exemptions mentioned in paragraph 10, within 24 months after acquisition. Subject to the interim arrangement as mentioned in paragraph 12 below, the SSD is payable within 30 days of the signing of the Agreement for Sale and Purchase (“ASP”)/Assignment⁵.

9. We propose that 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. Whereas in some jurisdictions such additional stamp duty is levied on the seller, we believe our proposal is more appropriate as this will allow the Inland Revenue Department (“IRD”) to collect the SSD from the buyer in the event that the seller cannot be traced, which is in line with the current law. This could help discourage manipulated transactions as the buyer will also be held liable when the seller has vanished.

10. 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 relatives⁶, transfers between associated companies, transfers of the

⁴ 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.

⁵ If there is no ASP, the SSD is payable within 30 days of the signing of the Assignment.

⁶ Currently, the nomination of close relatives (i.e. spouse, parent and child) to take up the assignment is exempt from stamp duty but resale of a property from the owner to his close relative is subject to normal ad valorem stamp duty. It is proposed that the resale or transfer of a property to close relatives is exempt from SSD as the resale or transfer is unlikely to be a speculative activity.

properties of deceased persons by will or by law to the beneficiaries, sale of properties due to bankruptcy/involuntary winding up, and sale of properties to the Government. For the purpose of counting the holding period, we also propose to provide a concession by treating the date of acquisition of a residential property by a deceased person as the date on which the beneficiary or executor acquired interest in the property. Under the existing Ordinance, exemption for stamp duty is granted to certain transfers to the Government, transfers between associated companies, passing of properties of a deceased person by will or by law to beneficiaries and nomination of close relatives to take up the assignment.

11. To deter non-compliance, we propose to extend the existing statutory sanctions under the Ordinance to cover the SSD. In other words, any person who fails to pay the SSD by the deadline for payment shall be liable to penalties up to 10 times the amount of the SSD payable and any unpaid the SSD shall become a civil debt due to the Collector of Stamp Revenue. Evasion of the SSD by fraudulent practices shall be a criminal offence, same as for normal stamp duty under the existing Ordinance.

12. We propose that this measure takes immediate effect on 20 November 2010 so that all residential properties acquired on or after 20 November 2010 will be caught and SSD-chargeable if the residential properties are resold within 24 months. Before the coming into effect of the new law, the 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 the SSD. Demand notes on the SSD will then be issued after the new legislation is enacted. We will draw the attention of the public, the Estate Agents Authority, the Law Society of Hong Kong, the Real Estate Developers Association of Hong Kong, and the major estate agency associations to the aforementioned arrangement.

13. The IRD has all along been monitoring property transactions so that for transactions that amount to a trading venture, the IRD will levy profits tax on the persons or companies concerned for profits arising from such transactions. The IRD will continue to do so.

No Deferred Payment of Stamp Duty

14. We have already disallowed deferred payment of stamp duty for residential property transactions valued more than \$20 million with effect from 1 April 2010. To reduce the liquidity of speculators, we propose to disallow deferred payment of stamp duty for all residential property transactions. This means that the stamp duty has to be paid within 30 days after the signing of the ASP, and will no longer be allowed to be paid at the later of three years after the signing of the ASP or until the completion of assignment of the property transaction (whichever is the earlier).

15. This proposal, however, can only be implemented after the coming into effect of the new law. In the meantime, the IRD will continue to allow and approve applications for deferring stamp duty payment on agreements made in accordance with the prevailing legislation until the new law comes into effect.

OTHER RELATED NEW MEASURES

16. The Hong Kong Monetary Authority will continue to closely monitor the market situation, and will make adjustments to the risk management guidelines for banks.

17. The aforementioned new measures relating to stamp duty are part and parcel and a continuation of the basket of measures in the four areas as mentioned in paragraph 2 above to ensure the healthy and stable development of the property market. The objective of these measures is to curb speculation, send a clear signal to anyone minded to make quick profits through speculating in our property market that they will have to reckon with these measures and the other possible measures that we will adopt as and when necessary. With diminished prospect for quick profits from speculating in Hong Kong properties, there will be less speculation by anyone, whether individuals, HK companies or foreign companies.

LEGISLATIVE TIMETABLE

18. To effect the proposals as mentioned in paragraph 1 above relating to stamp duty, we aim to introduce the Stamp Duty (Amendment) (No. 2) Bill 2010 into the LegCo in early December 2010.

IMPLICATIONS OF THE PROPOSALS

Annex B

19. The economic, financial, civil service, environmental and sustainability implications of the proposal are set out at the **Annex B**. 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. It has no productivity implications.

PUBLIC CONSULTATION

20. Owing to the confidentiality of the measures, no formal consultation has been carried out specifically for the proposed measures at paragraph 1 above. However, we have formulated these proposals after taking into account calls from the public for the Government to take further measures, including stamp duty measures, to curb speculation.

PUBLICITY

21. Press release will be issued. Relevant information about the new measure will be uploaded onto the Transport and Housing Bureau's website (www.thb.gov.hk). A spokesman is available to answer press inquiries.

ENQUIRIES

22. Enquiries on this brief can be addressed to Mr Eugene Fung, Principal Assistant Secretary (Housing) (Private Housing) at 2761 5094.

Transport and Housing Bureau
November 2010

Annex A

Existing Ad Valorem Stamp Duty Rates for Property Transactions

Consideration	Stamp Duty Rates
Not more than \$2 million	\$100
More than \$2 million but not exceeding \$3 million	1.5%
More than \$3 million but not exceeding \$4 million	2.25%
More than \$4 million but not exceeding \$6 million	3%
More than \$6 million but not exceeding \$20 million	3.75%
More than \$20 million	4.25%

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 proposal will be absorbed within relevant departments' existing resources as far as possible.

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 costly 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 to the development of Hong Kong as a whole.