

**立法會**  
**Legislative Council**

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**Bills Committee on Stamp Duty (Amendment) Bill 2012**

**Meeting on 18 January 2013**

**Background brief prepared by the Legislative Council Secretariat**

**Purpose**

This paper provides background information on the Administration's proposal to amend the Stamp Duty Ordinance (Cap. 117) ("SDO") to increase the duty rates and extend the holding period in respect of the Special Stamp Duty ("SSD") and to introduce the Buyer's Stamp Duty ("BSD"), and gives a summary of the discussion by the Panel on Financial Affairs ("FA Panel") and the Panel on Housing ("Housing Panel") on the proposal.

**Background**

2. The increased global liquidity, an exceptionally low interest rate environment and keen competition in the mortgage market have fuelled the surge in property prices in recent years. Over the years, the Administration has implemented a number of measures to safeguard against the risk of a property bubble. Since 2010, the Administration has been responding to the situation through the introduction of long, medium and short-term measures in four areas, namely, increasing land supply; combating speculative activities; enhancing the transparency of property transactions; and preventing excessive expansion in mortgage lending. The demand side management measures aim at alleviating the demand for housing by according priority to meeting the needs of Hong Kong Permanent Residents ("HKPRs") under the exceptional circumstances of an overheated property market with supply shortage.

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

3. As the exuberant state of the property market has spread to the mass

market, the Administration considers it necessary to introduce measures targeting at speculators to curb speculation, reduce the risk of the development of property bubble and ensure the healthy and stable operation of the property market. The Stamp Duty (Amendment) (No. 2) Bill 2010 was introduced in December 2010 to impose an SSD on residential properties of all values on top of the ad valorem property transaction stamp duty<sup>1</sup>, at the point of resale if the properties were acquired on or after 20 November 2010 and resold within 24 months after acquisition. SSD payable is calculated at the following regressive rates for different holding periods –

- (a) 15% if the property has been held for six months or less;
- (b) 10% if the property has been held for more than six months but for 12 months or less; and
- (c) 5% if the property has been held for more than 12 months but for 24 months or less.

4. A Bills Committee was set up to scrutinize the Stamp Duty (Amendment) (No. 2) Bill 2010 which was subsequently passed on 22 June 2011. A copy of the report on the deliberations of the Bills Committee is hyperlinked in the **Appendix**.

### **Stamp Duty (Amendment) Bill 2012**

5. While speculation has declined since the introduction of SSD, abundant liquidity and low interest rates have continued to fuel the current property boom. Overall flat prices have risen by 20% during the first nine months of 2012, culminating so far at a hefty increase of 107% over the 2008 trough. By September 2012, overall flat prices have surpassed the 1997 peak by 26%. The exuberant state of the property market was evident in all segments of the market, but particularly at the mass market end.

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<sup>1</sup> The existing ad valorem stamp duty rates on transactions for both residential and non-residential properties are as follows -

<b>Property consideration</b>	<b>Rate</b>
Up to \$2,000,000	\$100
\$2,000,001 to \$3,000,000	1.50%
\$3,000,001 to \$4,000,000	2.25%
\$4,000,001 to \$6,000,000	3.00%
\$6,000,001 to \$20,000,000	3.75%
\$20,000,001 and above	4.25%

Note: There is marginal relief among different value bands.

6. In view of the above, and having consulted the Executive Council on 26 October 2012, the Financial Secretary announced on the same day the new demand-side management measures, i.e. the enhancements to SSD and introduction of BSD by amending SDO to implement the following proposals –

- (a) to adjust upward the duty rates and to extend the holding period in respect of SSD, as follows –
  - (i) 20% of the amount or value of the consideration if the residential property has been held for six months or less;
  - (ii) 15% of the amount or value of the consideration if the residential property has been held for more than six months but for 12 months or less; and
  - (iii) 10% of the amount or value of the consideration if the residential property has been held for more than 12 months but for 36 months or less;
- (b) to introduce a BSD on residential properties acquired by any person except an HKPR. BSD is to be charged at a flat rate of 15% on all residential properties, on top of the existing stamp duty and SSD, if applicable. There will be exemptions from BSD under certain circumstances; and
- (c) to introduce a mechanism whereby SSD and BSD rates can be revised by means of subsidiary legislation.

7. According to the Administration, the introduction of BSD for residential properties acquired by any person (including companies) except an HKPR has taken into account the increasing share of residential flat supply taken up by non-local buyers and the fact that the demand-supply balance in the property market will remain tight in the near future, amidst a persistently low interest rate environment. While the Administration admits that BSD will cause inconvenience to some non-local buyers, it emphasizes that it is an extraordinary measure introduced under exceptional circumstances. The Administration undertakes to consider withdrawing the measure when the market regains its balance.

8. The Administration proposes that the new measures should take effect on the day immediately following the announcement on 26 October 2012 so that all residential properties acquired on or after 27 October 2012 will be subject to the new SSD regime and BSD upon the enactment of the new legislation. The Inland Revenue Department will record all the residential property transactions

between 27 October 2012 and the date on which the new law comes into effect, and demand notes for SSD underpaid/BSD will be issued after the new legislation is enacted.

9. The Administration also proposes to introduce a mechanism whereby SSD and BSD rates can be revised by means of subsidiary legislation subject to the Legislative Council's negative vetting, so that further changes to these rates in future can be made in a timely manner as and when necessary.

### **Discussion by Panels**

10. The FA Panel and Housing Panel were briefed on the proposals pertaining to the Stamp Duty (Amendment) Bill 2012 at the joint meeting held on 2 November 2012. The concerns raised by members are summarized below.

#### Effectiveness of the proposed measures

11. Amidst an extremely low interest rate environment and persistently large fund inflow into Hong Kong, some members were doubtful whether the proposed measures would be effective in curbing speculative activities. They were worried that the effects of the measures might be limited and short-lived, in particular, given the high liquidity of Mainland buyers who could ride on the appreciation of Renminbi to offset the impact of an increased investment cost. It was also observed that some property developers had launched different business tactics to counteract the impact of the proposed measures on sales, such as offering to pay BSD for non-HKPR flat buyers. As the proposed measures are applicable to transactions of residential flats only, there was concern that speculative activities might shift to other assets such as car park spaces and taxi-operating licences.

12. Some members urged the Administration to formulate tougher measures to address the overheated property market, such as introducing capital gains tax, restricting the sale of residential properties to HKPRs only for an extended period, and restoring rent control to curb increases in the rental of residential flats. It was also suggested that the Administration should implement measures to deal with the equally overheated commercial property market when necessary.

13. The Administration advised that it would continue to closely monitor development in the market and price trends in assessing the effectiveness of the measures. It would not rule out the possibility of introducing further measures to tackle the overheated property market.

### Impact on genuine home buyers and sellers

14. Given that BSD will apply to residential properties acquired by companies (irrespective of whether these companies are held by HKPR or otherwise), there were concerns that the proposed measures might indiscriminately affect genuine home buyers, such as HKPR home-buyers acquiring residential properties in the name of companies, and overseas companies purchasing residential properties in Hong Kong for use as staff quarters. Some members were worried that the measures might unintentionally convey a message to the market that the taxation policies of Hong Kong were inclined towards the interests of HKPRs over non-HKPRs, which might adversely affect investment by overseas companies in Hong Kong. There were also suggestions that the Administration should grant exemptions from BSD for company buyers whose directors were solely HKPRs, and for genuine home-buyers who sold their properties to meet their emergency needs. Some members further requested for the inclusion of anti-tax avoidance provisions in the Bill to prevent tax evasion involving the issue of share transfer to effect property transactions.

15. According to the Administration, exempting local companies from BSD might lead to tax evasion as property transfer to non-HKPRs could be effected through a transfer of company shares which was not BSD-chargeable. Also, exemptions based on personal circumstances would deviate fundamentally from the operation of the present taxation system and render the BSD regime too complicated to operate effectively to achieve the desired results. The Administration pointed out that whilst it was understandable that the proposed BSD might bring about inconvenience to foreign companies and increase their investment cost, the measure was warranted at the current unusual time to stabilize the property market.

### **Relevant Papers**

16. A list of relevant papers is in the **Appendix**.

## Bills Committee on Stamp Duty (Amendment) Bill 2012

### List of relevant papers

Council/ Committee	Date of meeting	Paper
Council meeting	22 June 2011	Report of the Bills Committee on Stamp Duty (Amendment) (No. 2) Bill 2010 (LC Paper No. CB(1)2444/10-11)) <a href="http://www.legco.gov.hk/yr10-11/english/bc/bc02/reports/bc020622cb1-2444-e.pdf">http://www.legco.gov.hk/yr10-11/english/bc/bc02/reports/bc020622cb1-2444-e.pdf</a>
Panel on Financial Affairs and Panel on Housing	2 November 2012	Legislative Council Brief issued by the Transport and Housing Bureau in October 2012 <a href="http://www.legco.gov.hk/yr12-13/english/panels/hg/papers/fahg1102-thb201210-e.pdf">http://www.legco.gov.hk/yr12-13/english/panels/hg/papers/fahg1102-thb201210-e.pdf</a>
Legislative Council Brief	--	Legislative Council Brief issued by the Transport and Housing Bureau in December 2012 <a href="http://www.legco.gov.hk/yr12-13/english/bills/brief/b01_brf.pdf">http://www.legco.gov.hk/yr12-13/english/bills/brief/b01_brf.pdf</a>