Future adjustments to the rates of the Special Stamp Duty and the Buyer's Stamp Duty

This paper serves to provide further information on the Government's proposed approach to amend the rates of the Special Stamp Duty (SSD) and the Buyer's Stamp Duty (BSD) in future.

The mechanism proposed under the Stamp Duty (Amendment) Bill 2012

2. In order to ensure that the demand-side management measures introduced under the Stamp Duty (Amendment) Bill 2012 (the Bill) can be adjusted, or even withdrawn, in an immediate and timely manner in response to the property market situation, the Bill proposes that the rates of the SSD and the BSD be revised by way of subsidiary legislation, to be made by the Financial Secretary and subject to negative vetting by the Legislative Council (LegCo) which enables the adjustments to be gazetted and put to effect immediately, subject to subsequent scrutiny (and possible amendments without retrospective effect) by LegCo. The Government considers that, given the fact that the property market is extremely sensitive to any change in external factors, such as interest rates and the state of the global economy, the proposed mechanism is necessary to ensure the healthy and stable development of the property market. The proposed mechanism also addresses the concerns of stakeholders from the financial and property-related sectors that the demand-side management measures should be adjusted (or even withdrawn) promptly in light of the market situation.

Committee stage amendments proposed by Members

3. The Hon James To is of the view that the proposed negative vetting mechanism might undermine the power of LegCo, and has therefore proposed committee stage amendments (CSAs) to require that future adjustments to the SSD and BSD rates could only be made by the Financial Secretary by way of subsidiary legislation subject to LegCo's

positive vetting, or by resolution of LegCo. As explained in LC Paper No. CB(1)837/13-14(01), the Government cannot agree to the Hon To's CSAs. The Government considers that a piece of subsidiary legislation to adjust the relevant rates under the negative vetting procedure is a well-established procedure in processing subsidiary legislation and is widely adopted in the laws of Hong Kong. LegCo can still repeal or amend the proposed rates within the specified scrutiny period of 28 days under the negative vetting mechanism (with a further 21 days if LegCo so decides). In other words, LegCo's scrutiny power is in no way compromised.

4. If the relevant rates were to be adjusted in the way proposed under the Hon To's CSAs, a prolonged process would entail, which would not be able to address the market sensitive nature of the SSD and BSD rates and the need to ensure timely adjustment in response to market situation. In short, the Hon To's CSA would require the Government to first give notice to LegCo to move the relevant motion to adjust the rates; this is usually followed by scrutiny by a subcommittee if Members consider it necessary. Only after the subcommittee has finished the scrutiny can the Government formally move the relevant motion in a Council meeting for it to be voted upon by LegCo Members. If the motion is passed, the Government still needs to gazette the resolution before the new rates can take effect. Since there is no time limit for the completion of the above process, the Hon To's proposal would have adverse implications for the property market by delaying any necessary adjustment to the demand-side management measures. Furthermore, under the Hon To's proposed CSAs, the adjusted rates would only apply to transactions that take place after the passage by LegCo and gazettal of the subsidiary legislation. This would create a window between the announcement and the effective date of the adjustment, during which the original rates would still apply. In case the rates need to be reduced or even withdrawn following any amendment by LegCo Members, the uncertainty brought about by such a window would seriously affect the market situation. The market might even become stagnant, leading to greater risks to the macro-economy and the financial sector.

5. The CSA proposed by the Hon Martin Liao would allow the Financial Secretary to adjust the relevant rates by a notice published in

the gazette. While the adjustment might take immediate effect upon the gazettal of the notice, the notice would cease to have effect if the relevant motion of the Government is not subsequently passed by LegCo, or upon the expiration of a six-month period from the gazettal date. The Government is concerned that although the scrutiny period is limited to six months, such an adjustment mechanism would still create uncertainty for the market, as the new rates announced in the gazette notice would still be subject to change. If the Government's proposed adjustment is voted down by LegCo, or if LegCo's scrutiny is not completed within the six-month period, the proposed new rates would cease to have effect. The original rates would then apply, and retrospectively, thus affecting all transactions that have taken place during the interim period. The Government would have to collect any stamp duty underpaid or refund the excessive stamp duty collected, as the case may be. This would also cause confusion to the market and bring inconvenience to relevant sectors.

The Government's undertaking

6. The Government would like to stress that the negative vetting mechanism proposed in the Bill is in the best interest of the community in view of the nature of the property market, as it enables the relevant demand-side management measures to be adjusted, or even withdrawn, in an immediate and timely manner in response to the market situation. This is particularly important in the case where the relevant measures need to be tapered or even withdrawn promptly when the market goes down.

7. The Government is aware that while Members appreciate the need for a prompt adjustment of the measures through the negative vetting mechanism when the market goes down, some consider that any proposed increase in SSD or BSD rates should be subject to more deliberation by LegCo. Some Members have further suggested an approach that will allow for the use of negative vetting in cases where the adjustment will be to reduce the rates, but Government should give Members an opportunity to discuss any amendment to the rates before any upward adjustment takes effect. We have studied these concerns

and suggestions very carefully.

8. To strike a balance between preserving the effectiveness of the demand-side management measures (which are bound to be market-sensitive and time-critical) and addressing Members' concerns, the Government is prepared to give a formal undertaking that, while we maintain that we should retain the negative vetting mechanism in the Bill for future adjustments of the SSD or BSD rates, should there be a need to increase the SSD or BSD rates in future, we would only take forward such a proposal by way of a bill to amend the Stamp Duty Ordinance as in the present case. We would only make use of the negative vetting mechanism as proposed in the Bill in situations where we see a need to reduce or withdraw the rates. The reason why the Government prefers increasing the relevant rates by way of an amendment bill to a piece of subsidiary legislation subject to LegCo's positive vetting is that, the former still allows the adjusted rates to apply to transactions that take place immediately after the Government's announcement, while the latter would create a window for speculations and further stimulate the property market. We are satisfied that this approach is consistent with the Government's policy objective while respecting LegCo's interest in scrutinizing proposed increases to the SSD and BSD rates. The Government's commitment to use an amendment bill to amend the rates upwards is legally in order and does not entail further amendment to the present Bill.

9. The Secretary for Transport and Housing will give a formal undertaking on this approach in LegCo during resumption of the second reading debate on the Bill.

Transport and Housing Bureau
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