

**The Administration's response to the submission from
the Hong Kong Institute of Estate Agents of 5 April 2013
(LC Paper No. CB(1)823/12-13(01))**

This paper serves to respond to the submission dated 5 April 2013 from the Hong Kong Institute of Estate Agents (HKIEA) and referred to us by the LegCo Secretariat on the same date.

2. In view of the continuously exuberant state in the residential property market arising from a tight supply of flats, extremely low interest rates and the influx of capital from overseas, the Government announced the introduction of two demand-side management measures on 26 October 2012, i.e. the enhancement to the Special Stamp Duty (SSD) and the introduction of the Buyer's Stamp Duty (BSD). We consider that the BSD is constitutional, and is a legitimate taxation under Article 108 of the Basic Law. In pursuance of Article 108, the Government may, subject to the scrutiny of the Legislative Council, make laws concerning matters of taxation.

3. As we have explained in our response to the previous submission from the HKIEA (LC Paper No. CB(1)770/12-13(02)) refers), although Article 25 of the Basic Law provides that all Hong Kong residents shall be equal before the law, this guarantee does not invariably require exact equality. Differences in legal treatment may be justified for good reason. Thus, differential treatment may be justified if the difference in treatment pursues a legitimate aim, is rationally connected to the legitimate aim and is no more than is necessary to accomplish that aim.

4. As far as BSD is concerned, the proposed exemption for HKPR buyers pursues the legitimate aim of according priority to meeting the housing and home ownership needs of Hong Kong permanent residents (HKPRs) who have a close connection with Hong Kong under the current exceptional circumstances where supply is tight and the property market remains exuberant. We understand the HKIEA agrees that BSD pursues a legitimate aim. We would like to clarify that the Administration is not suggesting that *“only non-HKPRs have contributed to the bubble therefore only HKPRs should be exempted from the BSD”*, as alleged by HKIEA in paragraphs 16 and 17 of its submission. In fact, we are of the view that the current exuberant market situation is the combined result of various factors, including the overall demand and supply imbalance, the influx of capitals, the ultra-low interest rate environment, etc. The objective of BSD is to address the home ownership needs of HKPRs

under the current exceptional circumstances.

5. The HKIEA considers that BSD is not rationally connected to its legitimate aim. We would like to clarify that, by increasing the cost of acquisition of residential properties by non-HKPRs, we consider that BSD would reduce the demand of non-HKPRs for residential properties, thereby according priority to the home ownership needs of HKPRs under the current tight supply situation. As a matter of fact, since its announcement, there has been a significant drop in demand from non-local buyers. Stamp duty statistics from the Inland Revenue Department indicate that purchases of residential property by non-local individuals and companies (local and non-local) plunged to a monthly average of 267 cases or 4.3% of total transactions in the first three months of 2013, markedly below the respective monthly average of 1 089 cases or 13.6% of total transactions from January to October 2012 (i.e. the period before the announcement of the BSD). The above figures demonstrate that the BSD is rationally connected to its legitimate aim. By reducing non-HKPRs' demand for residential properties, BSD will be effective in enabling more HKPRs to acquire residential properties to meet their housing needs.

6. We also consider that BSD is no more than necessary to accomplish its legitimate aim. Before BSD was introduced in October 2012, overall flat prices had risen by 20% during the first nine months of 2012, culminating at a hefty increase of 107% over the 2008 trough. By September 2012, overall flat prices had 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. Prices of mass market flats (i.e. flats smaller than 70 square metres in saleable area) had increased by a cumulative 34% between November 2010 when SSD was introduced and September 2012, far higher than the 18% increase for large flats over the same period. When compared with the trough in 2008, prices of large flats were 79% higher. Prices of mass market flats have surged even more, by 111%. Besides, there were also concerns that the share of residential property market transactions taken up by non-local buyers was on a general uptrend, with estimates suggesting that this had risen from 3.1% of all transactions in residential properties in 2008 to 3.9% in 2009, 4.5% in 2010, and 6.5% in 2011 (4.5% in the first nine months of 2012); and from 5.7% of transactions in the primary market in 2008 to 7.2% in 2009, 13.7% in 2010, and 19.5% in 2011 (and 13.5% in the first nine months of 2012). In light of 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 would remain tight,

coupled with the ramifications of the persistent low interest rate environment, the Government decided to introduce BSD to cool down the residential property market and accord priority to the home ownership needs of HKPRs. We consider that the demand-side management measures, including BSD, are essential to prevent even further exuberance in the housing market which may pose significant risks to our macro economic and financial sector stability; ensure the healthy and stable development of the residential property market which is crucial to the sustainable development of Hong Kong as a whole; and accord priority to HKPR buyers over non-HKPR buyers under the current tight supply situation.

7. As rightly pointed out by HKIEA, acquisitions of a residential property by a HKPR jointly with a non-HKPR close relative would be exempted from BSD. In considering the exemption arrangement of BSD, we have made reference to the existing exemption arrangements under the stamp duty regime, in particular the SSD. Other proposed exemptions include acquisition or transfer of a residential property pursuant to a court order; residential properties as a gift to charitable institutions exempted from tax under the Inland Revenue Ordinance; acquisition or transfer of a residential property under an estate of a deceased person pursuant to a will or in accordance with the law of intestacy; etc. We consider that the proposed exemption arrangement has struck the right balance between addressing the genuine needs of the public and safeguarding the effectiveness of BSD.

8. We would like to emphasise that the demand-side management measures, including SSD and BSD, are extraordinary measures introduced in response to the present exceptional circumstances. We will continue to closely monitor the private residential property market and consider withdrawing these measures as and when appropriate.

Transport and Housing Bureau
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