

**Meeting of the Bills Committee on Stamp Duty (Amendment) Bill 2012  
on 7 June 2013**

**Opening Remarks by Secretary for Transport and Housing**

First of all, I would like to thank the Committee for inviting me to this meeting and allowing me to explain in more detail the issues relating to the Stamp Duty (Amendment) Bill 2012 (the Bill) which are of Members' concern. Chairman, please allow me to elaborate on the Government's positions in this regard.

Property prices have been soaring in the recent years due to the imbalance between supply and demand, extremely low interest rates and excessive liquidity. It is more worrying that the market is showing an irrational sign of exuberance. Property prices will deviate further from the economic fundamentals if we do not respond in a timely manner. Worse still, should there be a change in the interest rates or other external factors, the subsequent adjustment would bring even greater pain to the community.

In view of the above situation and after careful consideration, the Government decided to launch demand-side management measures, i.e. an enhanced Special Stamp Duty (SSD) and the Buyer's Stamp Duty (BSD), in October 2012 to further combat speculative activities, cool down the exuberance in the property market, and accord priority to Hong Kong Permanent Resident (HKPR) buyers under the tight supply situation. The Bill aims to implement the above extraordinary measures under the current exceptional circumstances. The Government is fully aware that the SSD and BSD, both of which are extraordinary and targeted measures, will inevitably cause pain and inconvenience to certain parties. However, after giving due consideration in various aspects, we trust that the launch of such demand-side management measures is in the best interest of the community as a whole.

Although the exuberant atmosphere in the property market has been cooling down over the past few months, as the Financial Secretary has mentioned, the risk of a property bubble cannot be neglected taking account of the conditions that low interest rates and excessive liquidity still persist and that the external environment

remains fragile, fuelled with the tight supply in the short run. Under the current sensitive market situation, it is vital for us not to send out any message of relaxing the demand management. To tackle the supply-demand tension at source, there is no doubt that we have to secure a long-term and sustainable increase in housing and land supply. In this connection, the Government has also adopted the supply-led strategy as the basis for addressing the housing issues. The relevant measures have been clearly elaborated by the Chief Executive in his 2013 Policy Address. We reaffirm that it is the prime policy objective for housing to facilitate a healthy and steady development of the property market.

Chairman, we have all along listened to and considered the various comments given by Members, relevant organisations and trade representatives concerned on the policy and implementation issues of the Bill. At present, most of the comments on the Bill focus on the BSD. I have to emphasise that the BSD is aimed to increase the overall cost of property acquisitions to curb the market exuberance and cool down the property market. However, to cater for the housing needs of HKPRs, we have offered the only exception under the proposed mechanism that acquisitions of residential properties by HKPRs are exempted from the BSD. If too many exemptions were to be granted, the effectiveness of the measure would inevitably be undermined, which is definitely not in line with the policy intention of the BSD and cannot serve the best interest of the community as a whole.

Now, I would like to explain the Administration's position on the issues which Members are concerned about.

(I) Refunding the BSD for redevelopment projects

It is always our policy objective that the BSD should not hinder redevelopment. In line with this objective, we have proposed in the Bill to establish a BSD refund mechanism, which enables a person or a company acquiring residential properties for redevelopment to apply for the refund of the BSD paid, subject to specific conditions (i.e. completion within six years).

During the deliberations of the Bills Committee, we noted some Members' views that as redevelopment activities are conducive to increasing flat supply, the Government should consider further relaxing the BSD refund mechanism. The two major principles held by the Administration in respect of the BSD refund mechanism

for redevelopment are: (a) before the BSD paid can be refunded, the developer concerned has to obtain ownership of the entire lot to be redeveloped; and (b) there is proof that the developer concerned will use the site for redevelopment purpose. Based on these two principles, the Administration is willing to consider the comments from Members and the community, with a view to refunding the BSD paid as soon as possible after the developer concerned has acquired the entire lot for redevelopment and satisfied certain conditions to prove if there are an intention and concrete actions for the redevelopment. These conditions may include that the developer has to demolish the original structure(s) on the lot to be redeveloped; the building plan of the redevelopment project has been approved by the Buildings Department (BD); or BD has given consent to the commencement of foundation works for the redevelopment project. We will submit the relevant committee stage amendments to the Bill in due course to explain the newly proposed mechanism in detail.

(II) Exempting companies owned by HKPRs from paying the BSD

We have been listening very carefully to the views of Members and relevant organisations on whether companies should be subject to BSD payment and have examined in detail all relevant proposals. We understand that acquiring residential properties in the name of a company is not uncommon in Hong Kong, and that the introduction of the BSD will increase the cost for those who do so. After serious consideration, however, we think that due care is warranted in the light of the tight supply situation and potential risks of overheating in the property market. As I have mentioned just now, it is vital for us to drive home the message, both to the public and the market, that the Government is determined to continue to put in place all the necessary measures to achieve its policy objectives and stabilise the property market.

Some Members have proposed that companies of which all shareholders are HKPRs should be exempted from the BSD under a self-declaration mechanism. The representatives of the Administration have at the previous meetings of the Bills Committee already spelt out repeatedly the Government's considerations in this regard. Now, let me explain again. It is the policy intention of the Government that the scope of exemption should not be widened lest the effectiveness of the BSD be undermined. Therefore, residential properties purchased in the name of a company, even if it is held by HKPRs, should also be subject to the BSD. This is to strike a reasonable balance between the policy objectives to cool down the property market on

the one hand and accord priority to the home-ownership needs of HKPRs on the other.

To identify a company for the exemption from the BSD on the basis of the HKPR status of its shareholders will cause confusion to the fundamental legal principle currently governing companies that “a company is an entity independent of its shareholders”. On that legal basis, the doubling of the ad valorem stamp duty (AVD) rates was proposed in February whereby in determining whether an HKPR possesses more than one residential property and hence is subject to the AVD, the Government will not take into account the residential properties held by that HKPR through a company. The enhanced SSD, the BSD and the doubling of AVD rates target at different demands in the spectrum of buyers for the primary objective of combating speculations and managing demands. Therefore, a standard yardstick is required to address the issues concerning stamp duties payable by companies in acquiring properties.

Besides, if companies set up by HKPRs are exempted from the BSD, the shareholders concerned with HKPR status may, through indirect ways that are not easily detectable, indirectly transfer the property interest held by a company and circumvent the BSD. Even if a self-declaration mechanism is in place, it is impossible for the Inland Revenue Department (IRD) to ensure that the companies and their shareholders have not breached the declaration or undertaking since it is extremely difficult, if not impossible, for the IRD to know and verify whether the shares of the companies have been transferred by such ways. The declaration mechanism will be rendered ineffective as a result. The Commissioner of Inland Revenue will elaborate this point where necessary.

If we are to plug all the possible loopholes, we may have to make fundamental changes to the taxation and company regimes. For instance, we may have to require notification to the IRD and the Companies Registry of any activities involving changes in the control of companies. As the BSD is an extraordinary measure introduced under exceptional circumstances, the Administration considers that it is not necessary to make such changes, which will have far-reaching impacts on the existing effective taxation and company regimes, for the sake of this measure.

- (III) Exempting charitable bodies which are exempted from tax under Section 88 of the Inland Revenue Ordinance (Cap. 112) (the IRO) from paying the BSD

We have proposed in the Bill that residential properties which are gifts given to charitable bodies exempted from tax under Section 88 of the IRO be exempted from the BSD. The proposal is in line with the existing AVD regime. We are aware that Members have asked whether more exemptions could be granted to such charitable bodies. For example, they should be exempted from the BSD when acquiring residential properties. We are of the view that there should be sound justifications for pursuing such a practice. In fact, under the existing taxation regime, charitable bodies do not enjoy general tax exemption across-the-board. Only profits which are generated from activities which fulfill the organisation's charitable objects will be exempted from tax as stipulated under the IRO.

As with any other companies, charitable organisations may carry out trading activities in the property market. We cannot take it for granted that all residential property transactions carried out by charitable organisations exempted from tax under section 88 of the IRO are purely for their charitable purposes.

We do not deny that charitable bodies may have the need to purchase residential properties, yet we should be careful in determining the priorities of different sectors in meeting their demands. Granting charitable bodies the exemption from the BSD in the purchase of residential properties is likely to result in other companies asking for exemptions with other justifications. Eventually it may increase the demand for residential properties, which in turn will go against the original policy intention of introducing the BSD.

- (IV) Introducing a sunset clause for the demand-side management measures

The Government does not agree that a sunset clause should be introduced for the demand-side management measures since it is impossible for us to make wild speculation on the future changes of the market conditions and the external factors and pre-determine a date on which these measures, including the BSD, will be deemed no longer necessary. Introducing a sunset clause unilaterally may only stimulate the demand later on and send a wrong message to the market. Notwithstanding this, we will timely review the SSD and BSD and revise the measures when appropriate by

making reference to a basket of indicators, including property prices, the housing affordability for the general public, the volume of property transactions, the supply of residential properties, mortgage payments, and rent-to-income ratio, etc. We undertake to report to the Legislative Council (LegCo) on the relevant review one year after the passage of the Bill by the LegCo.

Since both the SSD and BSD are extraordinary measures, we understand the importance of having them revised when necessary. We have proposed in the Bill that adjustments to the SSD and BSD rates be made by means of subsidiary legislation subject to negative vetting by the LegCo to ensure that we can flexibly and timely adjust the applicable rates to suitable levels (to “zero” if necessary), taking into account the market condition.

Chairman, the IRD has been recording all the residential property transactions that may be subject to the BSD and the enhanced SDD. The IRD is also prepared to recoup from the parties concerned the stamp duties after the enactment of the Bill. Before the enactment of the Bill, some properties may be transferred and disposed of again. The longer it takes to pass the Bill, the more complicated the situation will become. It will bring about uncertainties to the operation of the property market and land titles if the Bill is not passed in time. As such, we will go all out to co-operate with the LegCo with a view to completing the clause-by-clause examination as soon as possible.

Chairman, I am happy to answer any other questions that Members may like to raise.

**Transport and Housing Bureau**  
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