

Stamp Duty (Amendment) Bill 2013

**The Government's response to the draft Committee Stage Amendments
proposed by the Hon Tommy CHEUNG Yu-yan**

This paper sets out the Government's response to the draft Committee Stage Amendments ("CSAs") proposed by the Hon Tommy CHEUNG Yu-yan, as enclosed to the letter of 17 December 2013 from the Legislative Council ("LegCo") Secretariat.

Draft CSAs proposed by the Hon Tommy CHEUNG Yu-yan

2. The CSAs proposed by the Hon Tommy CHEUNG seek to amend the Stamp Duty (Amendment) Bill 2013 ("the Bill") as follows -

- (a) By amending the proposed sections 29DF(3)(a) and (4)(a), to enable a Hong Kong permanent resident ("HKPR") who has acquired a new residential property and has entered into an agreement for sale or conveyance on sale to dispose of his/her original and only other residential property in Hong Kong within 12 months from the date of acquiring the new property (instead of 6 months as proposed in the Bill) to get a refund of stamp duty for the difference between the old and new ad valorem stamp duty ("AVD") rates; and
- (b) By amending the proposed section 71, to specify that except for the proposed sections 29DE to 29DH and those provisions in so far as they are necessary to give effect to these sections, the Bill will expire by midnight on 23 February 2015 and add a new section to enable the Secretary for Transport and Housing ("STH") to, subject to the approval of the LegCo, specify another date (to substitute the midnight on 23 February 2015) by notice in the Gazette.

Refund arrangements for owners having acquired a new residential property before disposing of their original one

3. At the meetings in November and December 2013, the Government explained to Members the refund arrangements for owners having acquiring a new residential property before disposing of their original one, which fulfill the Government's policy intent whilst having due regard to the practical needs of changing properties and overseas practice. Our policy objective is to accord priority to the home ownership needs of HKPRs. As revealed from statistics and because of cash flow consideration, a considerable portion of buyers

replacing residential properties sold their original ones within the “six-month” period. Overall speaking, the current six-month arrangement strikes a balance between addressing the needs of HKPRs to replace their properties and safeguarding the effectiveness of the demand-side management measures.

4. The Bills Committee noted the necessity of setting a specified timeframe for buyers replacing residential properties to sell their original properties. We are aware that some Members consider that the six-month timeframe should commence from the issue date of an occupation permit so as to better suit the actual needs of buyers replacing properties if they acquire uncompleted flats which involve a time span from completion to delivery.

5. In response to Members’ views, we have examined the relevant suggestion from different perspectives and provided a preliminary analysis and factors for consideration as follows -

- (a) From the angle of policy formulation, we should take a stringent approach in drawing up the exemption rules to prevent individuals from acquiring another residential property under the guise of replacement and delaying disposal of their original one, which in effect let them hold more than one residential property for a long period of time;
- (b) Given that the doubled AVD measure is an exceptional measure under exceptional circumstances, any exemption or change should be consistent with the principle of proportionality in handling the problem concerned. According to the statistics compiled by the Inland Revenue Department (“IRD”), the majority (over 80%) of the residential property transactions belonged to the secondary market involving existing stocks and not the primary market (including existing stocks and pre-sale uncompleted flats) in 2012 and 2013;
- (c) Any targeted arrangement must come with clear definition and objective criteria in the legislation so as to facilitate effective implementation by IRD. We need to ascertain how to set out the objective criteria for the purpose of drawing up the specified timeframe for disposing of the original residential property for buyers acquiring uncompleted flats; and
- (d) Any proposal can only be accepted provided that the effectiveness of the measures or the reception of the message by the market would not be affected. If the timeframe for disposing of the original residential property for buyers acquiring uncompleted flats is to be relaxed, we need to consider how to handle similar request for relaxing the

timeframe because of some unforeseeable reasons for other buyers who acquire existing stocks.

6. We have reiterated clearly that we will continue to listen to the views of Members on this issue and will further study and follow up in collaboration with the Transport and Housing Bureau, Lands Department and Department of Justice. All in all, the refund arrangement should strike a balance between addressing the home ownership needs of HKPRs and safeguarding the policy objective and effectiveness of the doubled AVD measure.

Proposed sunset clause

7. The Hon Tommy CHEUNG's proposed CSAs set a date on which the doubled AVD measure would lapse (commonly known as "sunset clause"). The proposed sunset clause specifies that except for the proposed sections 29DE to 29DH and those provisions in so far as they are necessary to give effect to these sections, the Bill will expire by midnight on 23 February 2015. In addition, the CSAs propose a new section to enable STH to, subject to the approval of the LegCo, specify another date (to substitute the midnight on 23 February 2015) by notice in the Gazette.

8. The Government does not agree to the proposed sunset clause. As the Government has pointed out repeatedly at the Bills Committee on Stamp Duty (Amendment) Bill 2012 and this Bills Committee, we cannot willfully predict future market changes and various external factors, and come up with a date as to when the demand-side management measures would no longer be applicable. Therefore, any prescribed sunset clause would only disseminate erroneous messages to the market and fuel demand, thus affecting the effectiveness of the measures.

9. As a matter of fact, since the introduction of the doubled AVD measure, there are signs of cooling down in the property market. On the residential property market, flat prices increased by an average of 0.2% per month during March to November 2013, a notable deceleration from the monthly average increase of 2.7% in the first two months of 2013. On the non-residential property market, prices of retail, office and flatted factory space increased by an average of 0.04%, 0.3% and 0.2% respectively per month during March to November 2013, a notable deceleration from the monthly average increases of 1.9%, 2.6% and 4.1% respectively in the first two months of 2013. The above shows that the various stamp duty measures have eased the irrational property market exuberance, which is in line with our policy objective. However, the risk of a property bubble cannot be neglected given that the market sentiment remains unsettled and taking account of the conditions of low interest rates and excessive liquidity against the backdrop of tight supply in the short run.

Thus, it is essential for us to maintain the relevant demand-side management measures. Moreover, the Government has undertaken to review and report to the LegCo in a year's time after the passage of the exceptional measures of enhanced Special Stamp Duty and Buyer's Stamp Duty by the LegCo.

Financial Services and the Treasury Bureau
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