Bills Committee on Stamp Duty (Amendment) Bill 2013

The Administration's responses to the matters raised in Hon James TO's written submission

This paper sets out the Administration's responses to the matters raised in Hon James TO's written submission (LC Paper No. CB(1)971/13-14(01)), as enclosed to the letter of 24 February 2014 from the Legislative Council Secretariat.

2. The key matters raised are as follows -

(a) the proposed negative vetting mechanism to adjust the ad valorem stamp duty ("AVD") regime under the Stamp Duty (Amendment) Bill 2013 ("the 2013 Bill");

(b) the amendments made to the exemptions available for Hong Kong Permanent Residents ("HKPRs") who are minors and mentally incapacitated persons by Members to the Stamp Duty (Amendment) Bill 2012 ("the 2012 Bill");

(c) exemption for charitable bodies; and

(d) the "six-month" period for buyers acquiring a new residential property before disposing of their original one.

Adjustment mechanism for AVD

3. To enable the Government to make necessary adjustments to the demand-side management measures in a timely manner having regard to the changes in the property market situation, the 2013 Bill proposes empowering the Financial Secretary ("FS") to adjust the value bands and the rates of AVD by way of subsidiary legislation subject to negative vetting by the Legislative Council ("LegCo"). The relevant adjustment mechanism is drawn up with due regard to the rapidly-changing landscape in the property market and the unique nature of the demand-side management measures which are exceptional ones. Adjustments by way of subsidiary legislation subject to LegCo's negative vetting provide legal effect to charge AVD at the new value bands and rates. This provides certainty for the charging of AVD and clarity for implementation of any adjustments to the measure.

4. The abovementioned document asked whether the Government would consider amending the adjustment mechanism provided for under the 2013 Bill so that different

legislative means would be adopted for increasing or reducing duties under different circumstances. We consider that replacing the proposed adjustment mechanism by the "hybrid" mode is not applicable to the AVD regime. The doubled AVD is built upon the AVD regime and AVD is chargeable by reference to the consideration of the immovable property transactions at progressive rates. In other words, the AVD regime is different from that of the Buyer's Stamp Duty ("BSD") in the sense that it involves more than a single charge rate which is applicable across different value bands. Adjusting AVD may involve changes to the value bands and duty rates at the same time and we cannot easily determine whether the proposed adjustments should be regarded as "increasing the duty" or "reducing the duty". If we attempt to adjust AVD by the legislative means under the "hybrid" mode, it will create chaos in implementation and cannot give the market a clear message. In addition, the Bill includes Scale 1 which is applicable to transactions for immovable properties (i.e. the doubled AVD rates) and Scale 2 for transactions which are exempted (i.e. the original AVD rates). This makes the "hybrid" AVD adjustment mechanism difficult to implement under the 2013 Bill.

5. During the earlier scrutiny of the legislative proposals relating to the Special Stamp Duty ("SSD") and BSD, some Members proposed under the negative vetting mechanism that if the relevant resolution was not passed by LegCo or upon expiration of a specified period from the date of publication of notice in the Gazette, the notice should cease to have effect. Our worry is that the value bands and rates that the Inland Revenue Department ("IRD") applies since the date of notice published in the Gazette will be subject to the scrutiny of the relevant resolution and cannot be relied upon. This will not only make the basis for charging stamp duty uncertain but also affect the clarity of any adjustments to the measure. If the relevant adjustment is amended or vetoed, or the scrutiny cannot be completed before the specified period, the duty rates that have been applied to collect stamp duty during the interim period will cease to have effect, thus affecting all the property transactions during the period. IRD will have to follow up with the relevant parties of the transactions for the underpaid AVD or refund according to the final duty rates so amended or the original rates in the event that the resolution is not passed. This will make the parties to property transactions difficult to grasp the actual situation and bring uncertainties to the market which is inconsistent with the Government's intent to achieve timely adjustments in response to market changes. Hence, we earnestly hope that the Bills Committee will accept the proposal under the 2013 Bill to empower FS to adjust the AVD value bands and rates by way of subsidiary legislation under the negative vetting mechanism.

Exemption arrangement for HKPR minors and mentally incapacitated persons

6. As explained at the Bills Committee held on 24 February 2014, a HKPR minor who acquires a residential property through his/her trustee or guardian has to pay BSD for the relevant transaction under the withdrawal of exemptions to the HKPR minors in the 2012 Bill and so the possible abuse will have been addressed to a considerable extent. Generally speaking, if a HKPR who owns any other residential property when acquiring residential property, the transaction shall be subject to the doubled AVD under the 2013 Bill. Hence, we will maintain the proposed exemption arrangements under the 2013 Bill, i.e. a HKPR minor and mentally incapacitated person who acquires a residential property through his/her trustee or guardian can get exemption from the doubled AVD for the relevant transaction. However, if the minor and mentally incapacitated person has owned any other residential property, the relevant transaction shall be subject to the doubled AVD.

Exemption for the charitable bodies

7. As the Government has explained at the meetings of the Bills Committee on the 2012 Bill, section 88 of the Inland Revenue Ordinance ("IRO") stipulates that only the profits from primary purpose trading carried out by a charitable body (i.e. trading in the course of the actual carrying out of its expressed charitable objects or trading that is mainly carried out by the beneficiaries of the charity) are exempted from profits tax. The IRO does not prohibit charitable bodies from engaging in activities other than those carried out in pursuit of their charitable objects, but the profits generated from such activities will be subject to profits tax. With reference to the present AVD, SSD and BSD arrangements, and having considered the policy intent of the introduction of the doubled AVD, we do not propose exempting charitable bodies from the doubled AVD in acquisition of properties under the 2013 Bill.

Timeframe allowed for owners having acquired a new residential property before disposing of their original one

8. As we have stressed at previous meetings of the Bills Committee, setting a specified timeframe for buyers replacing residential properties to sell their original properties is necessary. We note the draft Committee Stage Amendments proposed by Hon Abraham SHEK Lai-him, Hon Tommy CHEUNG Yu-yan and Hon Tony TSE Wai-cheun respectively. Our preliminary view is that there are various factors which need to be balanced when considering different opinions. They include -

(a) the arrangements must have clear scope which are consistent with the policy objective;

(b) a stringent approach should be adopted in drawing up the exemption rules in order not to undermine the effectiveness of the measures or the reception of the message by the market; and

(c) the arrangements must be clearly defined in the legislation and setting of timeframe for disposal of the original property must have objective basis which can be easily understood by the public and effectively enforced by IRD.

9. We will handle the issue with care and continue to listen to the views of Members. We will report to the Bills Committee after examining all different opinions.

Financial Services and the Treasury Bureau
April 2014