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(English version only)

Second submission to LegCo

13th June 2013

To: all members of the Bills Committee on Stamp Duty (Amendment) Bill 2013
Legislative Council

This morning (video here) 28 delegations (including Webb-site.com) spoke for 3 minutes each on Double Stamp Duty to 8-11 legislators (at various times) on the Bills Committee and to an Administration delegation led by Mable Chan, "Deputy Secretary for Financial Services and the Treasury (Treasury) 2", who has perfected the administrative art of responding to Legislators' questions without answering them. She was completely unflustered by opposition from delegations and legislators and will make a great Principal Official in about 10 years' time.

The Government did not have the respect or courage to send the Financial Secretary or the Secretary for Financial Services and the Treasury, or even his Under-Secretary, to respond to delegations' views and legislators' questions. Civil servants like Mable Chan (or her boss, the Permanent Secretary) are not Principal Officials and are not responsible for policy - they just administer it. The following questions on policy went unanswered, so **please require the Administration to answer these questions**:

1. If DSD is intended to target speculators, then why is there no exemption for buyers who are not speculators? Such persons include businesses buying office or retail premises for their own occupancy.
2. Why not refund DSD to any business with a Business Registration at the address of the purchased property, proving owner-occupation?
3. Why not refund DSD to any person who owns the property for a specified time, such as 2 years, the same threshold as the original Special Stamp Duty, or 3 years, as proposed in the revised Special Stamp Duty (**SSD**)? Even if you hold for 100 years, there is no refund of DSD. Indeed, if anti-speculation is the goal, then why not just apply SSD (on resales) to commercial property and forget doubling the up-front duty?
4. Why is DSD described by Government as a "demand-side measure"? If the stamp duty was payable by the vendor out of gross proceeds, with exactly the same financial effects, then wouldn't the Government call it a "supply-side measure" (* example below)? In fact it is neither, it is a volume-suppressing measure. The higher transaction cost simply depresses the volume of transactions. Sellers are less willing to sell, and buyers are less willing to buy, because the Government is taking 8.5% out of the middle.
5. As DSD is not driven by revenue-raising, then its purpose must be to address some social harm (as cigarette taxes do) by modifying behaviour. Otherwise it is not a legitimate tax. So why is an increase in market volume harmful to the economy or public interest? Can the same be said when the volume of the stock market increases? Particularly, why is a higher volume of commercial property transactions bad for the economy or society at large? After all, it generates work in estate agents, lawyers, advertising and printing and indicates liquidity for those who wish to sell or buy properties. Whom does it hurt?
6. In its briefing paper, the Administration has noted an increase in volumes and an increase in prices, but has not produced any evidence to show causation - that is, that higher volume causes higher prices. It doesn't. Why then, does the administration seek to suppress volumes?
7. If there is no harm to society from higher volumes of commercial property transactions, then how is DSD a legitimate tax rather than a penalty for exercising a Basic Law right (Article 105) to acquire, use and dispose of property (including real estate)? That is, how is it constitutional to penalise people for exercising their Basic Law rights to transfer property, the exercise of which causes no demonstrable harm to society?
8. Article 5 of the Basic Law promises that "the previous capitalist system and way of life shall remain unchanged for 50 years" and Article 11 states that "No law enacted by the legislature of the [HKSAR] shall contravene this [Basic Law]". Now the Administration seeks to modify commercial behaviour by imposing deterrent taxes on transfers of property, without any public benefit, because, in its opinion, buyers engaging in such transactions are too "exuberant" (presumably, the Administration regards sellers as sensible). How is this proposed law consistent with the "previous capitalist system" in which buyers, owners and sellers were free to take their own risks without paternalistic intervention by the state?

* Example: if stamp duty was payable by the seller on the gross price, then a sale at $10.85m with DSD of $850k (7.83%) would be financially identical (to all parties) to a sale at $10.00m in which the buyer pays $850k of DSD (8.50%). In both cases, the buyer pays $10.85m net, the seller receives $10.00m net, and the Government receives $850k in stamp duty.