Stamp Duty (Amendment) Bill 2013

The Government's response to the draft Committee Stage Amendments proposed by the Hon Abraham SHEK Lai-him and Hon Andrew LEUNG Kwan-yuen

This paper sets out the Government's response to the draft Committee Stage Amendments ("CSAs") proposed by the Hon Abraham SHEK Lai-him *(LC Paper No. CB(1)1847/12-13(01))* and Hon Andrew LEUNG Kwan-yuen (*LC Paper No. CB(1)1847/12-13(02)*), as enclosed to the letter of 30 September 2013 from the Legislative Council Secretariat.

Draft CSAs proposed by the Hon Abraham SHEK Lai-him

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

(a) By deleting Clauses 3 and 8(5) of the Bill, to keep intact the timing for charging stamp duty on non-residential property transactions, i.e. to follow the existing practice of charging at the time of conveyance on sale but not to advance the timing for charging to the agreement for sale as proposed in the Bill; and

(b) By amending the proposed section 29DF(3)(a), to enable a Hong Kong permanent resident ("HKPR") who has acquired a new residential property and has entered into an agreement for 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 rates.

<u>Policy objectives of introducing the doubled ad valorem stamp duty ("AVD") measure</u>

3. The Government's policy objective of introducing demand-side management measures is to cool down the residential and non-residential property market immediately by way of managing demand, thereby reversing the market expectation that property prices could only go up. In order to achieve the instant cooling effect, we need to adjust the AVD rates having regard to the prevailing situation in the property market with a view to reinforcing the management on demand from those who have already acquired residential properties.

4. Besides, we propose to advance the timing for charging AVD for non-residential property transactions from the conveyance on sale to the agreement for sale. This proposed change is meant to be a permanent measure with an aim to tally with the existing arrangement for residential properties. The proposed increase in AVD rates and the advancement of the timing for charging AVD in respect of non-residential property transactions are complementary measures, which could hopefully forestall the shifting of rampant speculation or investment demand from the residential property market to the non-residential property market, thereby achieving the immediate cooling effect on the non-residential market.

5. As reflected by statistics, transactions for non-residential properties in 2012 in respect of retail, office and flatted factory space soared by 235%, 46% and 106% respectively when compared to the long-term averages, while prices surged by 145%, 68% and 231% respectively when compared to the peak in 1997. Following the introduction of doubled AVD measure in February 2013, the overall property market has shown signs of cooling down and thus eased the expectation that property prices could only go up. Prices of retail, office and flatted factory space increased by an average 0.2%, 0.7% and 0.8% respectively per month during March to August 2013, representing a notable deceleration from the monthly average increase of 1.9%, 2.6% and 4.1% respectively in the first two months of 2013 and a remarkable reduction from the monthly average increase of 3.4%, 2.1% and 3.8% respectively in 2012.

6. The Hon SHEK's first CSAs (as stated in paragraph 2(a) above) are inconsistent with the aforesaid policy objective, and if implemented, would inevitably encourage short-term speculative activities in respect of non-residential properties and undermine the effectiveness of the measure or the message received by the market. 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 housing supply in the short run, the risk of a property bubble cannot be neglected. It is essential for us to maintain the relevant demand-side management measures or we will fall short of success at the last stage. Thus, the Government does not agree to the proposed CSAs.

<u>Refund mechanism for residential property owners having acquired a new residential property before disposing of their original one</u>

7. To accord priority to the housing needs of HKPRs, the Government has proposed in the Bill to exempt HKPRs who do not hold any other residential properties in Hong Kong. As long as the relevant HKPRs are not beneficial owners of any other residential properties in Hong Kong on the date of acquisition of their residential properties, they are exempted from the doubled AVD and only need to pay AVD at the original rates, be they first-time buyers or

not. Besides, in order to cater for the replacement needs of HKPRs and having regard to the fact that HKPRs may own more than one residential property during the process of purchasing a new property for replacement of the existing one, we have purposely drawn up a refund mechanism to properly handle cases of replacement of properties.

8. Under the proposed refund mechanism, a residential property owner having acquired another residential property before disposing of the original one will have to pay AVD for the newly-acquired residential property at the enhanced AVD rates in the first instance. The difference in AVD payment between the old and new rates will be refunded upon application to the Inland Revenue Department ("IRD") within two years from the date of instrument in acquiring the new residential property provided that the owner has entered into an agreement for sale to dispose of his/her original and only other residential property in Hong Kong within 6 months from the date of acquiring the new property (but the owner is not required to complete the conveyance on sale within the 6-month period) and completed the disposal transaction thereafter.

9. For consistency with the Government's policy of according priority to the housing needs of HKPRs (including those who may hold two residential properties for a short period of time during the process of replacement of their properties), we consider it necessary to require a residential property owner having acquired another residential property to sell the original one within a specified timeframe. This is to prevent a property owner from acquiring another residential property under the guise of replacement and delaying disposal of his/her original one, meaning that he/she holds more than one residential property for a long period of time, which is inconsistent with the Government's policy objective.

10. According to IRD's data analysis, in 2011 and 2012, roughly half of the Hong Kong Identity Card buyers who sold their other residential properties after acquiring residential properties have their disposal transactions done within 6 months from acquisition. In fact, a residential property owner having acquired another residential property, in general, will not hold the original one for a long period of time for cash flow considerations. We understand that some banks in the market are providing bridging loans for customers replacing their properties with their newly-acquired residential properties and the repayment period of such bridging loans usually spans 6 months. Besides, we are aware that under Singapore's refund mechanism, a married couple (with a Singapore citizen spouse) can get refund of "Additional Buyer's Stamp Duty" paid on their second residential property provided that they enter into an agreement for sale for their first residential property within 6 months from the date of acquiring the second one.

11. Overall speaking, to uphold the Government's policy objective and having due regard to the practices of changing properties and overseas experience, we believe the relevant "6-month period" strikes a balance between addressing the needs of HKPRs to replace their properties and safeguarding the effectiveness of the demand-side management measures.

Draft CSAs proposed by the Hon Andrew LEUNG

12. The Hon Andrew LEUNG's proposed CSAs seek to set a date on which the doubled AVD measure would lapse, that is, a so-called "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 2016 (or another date to be specified by resolution).

13. 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, 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 will only disseminate erroneous messages to the market and fuel demand, thus affecting the effectiveness of the measures.

Financial Services and the Treasury Bureau
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