

II. REPORT

The date of First Reading of the Bill is 9 January 2013. Members may refer to the LegCo Brief (with no reference number) issued by Transport and Housing Bureau in December 2012 for further details.

Object of the Bill

2. To amend the Stamp Duty Ordinance (Cap. 117) to impose a higher rate of special stamp duty (SSD) on certain transactions of residential property acquired on or after 27 October 2012 if those transactions occur within 36 months after the acquisition, and to impose buyer's stamp duty (BSD) on certain agreements for sale and conveyances on sale of residential property executed on or after 27 October 2012; and to provide for incidental and related matters.

Background

3. The Stamp Duty (Amendment) Ordinance 2011 (No. 14 of 2011) was enacted in June 2011 to impose a special stamp duty (SSD) on transactions of residential property acquired on or after 20 November 2010 and resold within 24 months after acquisition with the view to curb short-term speculative activities in the local residential property market.

4. On 26 October 2012, the Financial Secretary, having consulted the Executive Council, announced further measures on the demand-side management, i.e. enhancements to SSD and the introduction of BSD. According to the Administration, the objectives of these measures are to prevent even further exuberance in the housing market which may pose significant risks to the macro economic and financial sector stability; to ensure the healthy and stable development of the residential property market which is crucial to the sustainable development of Hong Kong as a whole; and to accord priority to Hong Kong permanent residents (HKPR) buyers under the current market situation (para. 3 of LegCo Brief). The Bill is introduced to give effect to these proposals.

Provisions of the Bill

Adjustment of SSD

5. The Bill seeks to adjust the duty rates and extend the holding period in respect of SSD (clause 18(4) and (7)) as follows -

	Holding periods of properties	SSD payable¹
1.	Six months or less	20%
2.	More than six months but 12 months or less	15%
3.	More than 12 months but for 36 months or less	10%

Introduction of Buyer's Stamp Duty

6. The Bill also introduces BSD on agreement for sale and conveyance on sale of residential properties acquired by any person except where the purchaser or each of the purchasers is a HKPR. In addition to the usual stamp duty and SSD, if applicable, the BSD is to be charged at a flat rate of 15% in respect of all residential properties (clauses 9, 12, 18(5) and (8)). Under clause 5(1) of the Bill, a HKPR means a person who holds a valid permanent identity card under the Registration of Persons Ordinance (Cap. 177) or who is eligible to but is exempted from applying for the issue of a permanent identity card under regulation 25(e) of the Registration of Persons Regulation (Cap. 177A) (e.g. the aged, blind or infirm).

Application of BSD to companies

7. The Bill does not provide any exemption to companies, which are legal entities independent of their shareholders or directors and do not fall within the definition of "HKPR". The effect of the Bill is that all companies will be subject to liability of applicable SSD and/or BSD payment.

8. Under the Bill, the current relief in stamp duty liability in case of conveyance between associated body corporates under section 45 of the Stamp Duty Ordinance will be extended to BSD (clause 15). Under the existing section 45, "associated bodies corporate" are, for two bodies corporate, one is a beneficial owner of not less than 90% of the issued share capital of the other, or a third such body is a beneficial owner of not less than 90% of the issued share capital of each. Where a transferor and transferee of the relevant residential property cease to be associated within two years after the transaction, the relief from stamp duty will be cancelled and the companies will become liable to stamp duty payment including BSD.

Refund of BSD for redevelopments

9. The Bill also seeks to provide a refund mechanism to cater for acquisition of residential properties for the purpose of redevelopment (clause 12:

¹ Under the provisions of the Stamp Duty Ordinance, the SSD payable will be calculated according to the stated consideration for the transaction or the market value of the property as assessed by the Collector of Stamp Revenue (i.e. Commissioner of Inland Revenue), whichever is higher.

proposed section 29DD). A person who has paid BSD in respect of an instrument effecting the acquisition of a residential property may apply for a refund of the BSD payment if the relevant residential property concerned formed part of a lot of which the applicant has completed redevelopment within six years, or within the time extension as permitted under the Bill.

Adjustment of SSD and BSD rates

10. The Bill also seeks to add an empowering section (clause 16: proposed section 63A) to provide that the Financial Secretary may, by notice published in the Gazette, amend the percentage with respect to SSD and BSD specified in the relevant columns in the First Schedule to the Stamp Duty Ordinance (and as amended by the Bill). The effect of this provision is that the adjustment of SSD and BSD rates will be effected through subsidiary legislation and subject to the negative vetting of LegCo under section 34 of the Interpretation and General Clauses Ordinance (Cap. 1).

11. According to the Administration, adjustments to SSD and BSD rates by means of subsidiary legislation subject to negative vetting procedure by LegCo are proposed in order to have the necessary flexibility to adjust the applicable rate (to zero if necessary) in a timely manner with reference to the market situation.

Commencement

12. Under clause 1(2) of the Bill, the enacted Ordinance will be deemed to have come into operation on 27 October 2012.

Public Consultation

13. According to paragraph 21 of the LegCo Brief, the Administration has arranged meetings/briefing sessions for the relevant stakeholders following the announcement of the new measures and in general, the community at large supports the objectives of the new demand-side management measures to address the overheated residential property market and to ensure its healthy and stable development. The Administration has also received comments on certain operational details of BSD.

Consultation with LegCo Panel

14. The Clerk to the Financial Affairs Panel has advised that the Panel on Housing and the Panel on Financial Affairs were consulted on

2 November 2012. Various concerns were expressed by Panel members. The major ones included effectiveness of the new BSD and the enhanced SSD in curbing speculative activities given the extremely low interest rate environment and the large fund inflow into Hong Kong, possible diversion of speculative activities to the non-residential property market and other forms of assets, adverse effect on genuine home buyers, and the conditions and criteria for exemptions in respect of the newly proposed BSD.

Conclusion

15. In view of Members' concerns raised at the Panel meeting and the significance of the Bill for the real property market, Members may wish to consider setting up a Bills Committee to study the Bill in detail.

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