

立法會
Legislative Council

LC Paper No. LS40/12-13

**Paper for the House Committee Meeting
on 19 April 2013**

**Legal Service Division Report on
Stamp Duty (Amendment) Bill 2013**

I. SUMMARY

1. The Bill

To amend the Stamp Duty Ordinance (Cap. 117) to impose a higher rate of ad valorem stamp duty on certain instruments dealing with residential and non-residential properties acquired on or after 23 February 2013, except those in respect of residential properties of which the purchasers are Hong Kong Permanent Residents (HKPR) who are not beneficial owners of any other residential property in Hong Kong on the date of acquisition, or one of the purchasers is a HKPR and all the other purchasers, irrespective of whether they are HKPRs, are his close relatives (parent, spouse, child, brother or sister) and none of them is a beneficial owner of any other residential property in Hong Kong on the date of acquisition. The Bill provides a refund mechanism to cater for acquisition of properties for the purpose of redevelopment. An empowering section is added to provide that the Financial Secretary may, by notice published in the Gazette, amend the value bands and rates with respect to stamp duty chargeable on conveyance on sale and agreement for sale.

**2. Public
Consultation**

The Administration has conducted meetings/briefing sessions for the relevant stakeholders following the announcement of the new demand-side management measures. In general, the community at large supports the objectives of the new demand-side management measures to further address the overheated property market.

**3. Consultation with
LegCo Panel**

The Panel on Financial Affairs and the Panel on Housing were consulted at a joint meeting on 26 March 2013. Various concerns were expressed by members of the two Panels.

4. Conclusion

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.

II. REPORT

The date of First Reading of the Bill is 17 April 2013. Members may refer to the LegCo Brief (File Ref: TsyB R 183/700-6/5/0(C)) issued by Financial Services and the Treasury Bureau in April 2013 for further details.

Object of the Bill

2. To amend the Stamp Duty Ordinance (Cap. 117) to increase the stamp duty on certain instruments dealing with immovable property, to make agreements for sale of non-residential property chargeable with stamp duty, to revise the provisions concerning the effect of instruments not duly stamped, to empower the Financial Secretary to amend certain matters specified in the First Schedule to Cap. 117 and to provide for 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 instruments dealing with 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. 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 Buyer's Stamp Duty. The relevant measures are sought to be implemented by the Stamp Duty (Amendment) Bill 2012 introduced in January 2013, which is being examined by a Bills Committee of the Legislative Council.

4. On 22 February 2013, the Administration announced the new demand-side management measures, i.e. increasing the ad valorem stamp duty (AVD) rates on certain instruments dealing with residential and non-residential properties and making the full AVD in respect of non-residential property payable on agreements for sale. The Bill is introduced to give effect to these measures in the hope that such measures will narrow the supply-demand gap, and hence contribute to the stable development of the Hong Kong property market (para. 5 of LegCo Brief).

Provisions of the Bill

Adjustment of AVD

5. The Bill seeks to adjust the AVD rates by doubling across the board the AVD rates applicable to both residential and non-residential properties as follows -

<i>Consideration for purchase</i>	<i>New rate under the Bill</i>	<i>Existing rate under Cap. 117¹</i>
Up to \$2,000,000	1.5%	\$100
\$2,000,001 to \$3,000,000	3.0%	1.5%
\$3,000,001 to \$4,000,000	4.5%	2.25%
\$4,000,001 to \$6,000,000	6.0%	3.00%
\$6,000,001 to \$20,000,000	7.5%	3.75%
\$20,000,001 and above	8.5%	4.25%

Exceptions for Hong Kong Permanent Residents

6. Under the Bill, the new AVD rates will not apply in respect of residential properties of which –

- (a) the purchaser(s)/transferee(s) is/are Hong Kong Permanent Residents (HKPR) who is/are not beneficial owner(s) of any other residential property in Hong Kong on the date of acquisition, that is, the date on which the first chargeable agreement or conveyance is executed, if there is more than one such instrument; or
- (b) one of the purchasers/transferees is a HKPR and all the other purchasers/transferees, irrespective of whether they are HKPRs, are his close relatives (parent, spouse, child, brother or sister) and none of them is a beneficial owner of any other residential property in Hong Kong on the date of acquisition.

7. The effect of the exceptions is that the existing AVD rates under Cap. 117 will continue to apply. Under clause 8(4) 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).

¹ Under the provisions of the Stamp Duty Ordinance (Cap. 117), the AVD 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. the Commissioner of Inland Revenue), whichever is the higher.

Refund of stamp duty for redevelopments

8. Similar to the provisions in the Stamp Duty (Amendment) Bill 2012, the Bill provides a refund mechanism to cater for acquisition of properties for the purpose of redevelopment (proposed section 29DE in clause 18). A person who has paid stamp duty at the new rate under the Bill in respect of an instrument effecting the acquisition of a residential or non-residential property may apply for a refund of the difference of the amount paid under the Bill and that according to the old rate if the property concerned formed part of a lot of which the applicant has completed redevelopment within six years, or within the time extension permitted under the Bill.

Payment of full AVD for agreements for sale dealing with non-residential properties

9. In 1992, with the view to discouraging speculation in residential properties, legislative amendment was introduced to make AVD fully payable on signing of each agreement for sale with a nominal stamp duty of \$100 to be charged on the actual conveyance on sale. Prior to this legislative amendment, full AVD was payable only on the conveyance on sale.

10. The Bill seeks to align the time for payment of AVD on instruments dealing with non-residential property transactions with those dealing with residential property, i.e. on agreement for sale (clauses 8(5), 16(1) to (9) and 24(15)). The proposed amendments, together with the proposed increase in AVD, aim at forestalling the shifting of speculation or investment demand from the residential property market to the non-residential property market (para. 19 of LegCo Brief).

Adjustment of AVD rates

11. The Bill adds an empowering section to provide that the Financial Secretary may, by notice published in the Gazette, amend the value bands and percentage with respect to stamp duty under head 1(1) (conveyance on sale) and (1A) (agreement for sale) of the First Schedule to Cap. 117 (and as amended by the Bill) (clause 22). The effect of this provision is that the adjustment of AVD rates chargeable on those instruments will be effected through subsidiary legislation subject to the negative vetting of LegCo under section 34 of the Interpretation and General Clauses Ordinance (Cap. 1).

Commencement

12. Under clause 1 of the Bill, the enacted Ordinance, except clauses 3, 22, 25 and 26, will be deemed to have come into operation on 23 February 2013. Clauses 3, 22, 25 and 26, which deal with matters not directly related to the

adjustment of AVD rates announced by the Administration on 22 February 2013, will come into operation on the day on which the enacted Ordinance is published in the Gazette.

Public Consultation

13. According to paragraph 25 of the LegCo Brief, the Administration has conducted meetings/briefing sessions for the relevant stakeholders following the announcement of the new demand-side management measures. In general, the community at large supports the objectives of the new demand-side management measures to further address the overheated property market.

Consultation with LegCo Panel

14. The Clerk to the Panel on Financial Affairs has advised that the Panel on Financial Affairs and the Panel on Housing were consulted at a joint meeting on 26 March 2013. Various concerns were expressed by members of the two Panels. The major ones included the effectiveness of the enhanced AVD in addressing the overheated property market, justifications for increasing AVD rates across the board for all types of property transactions, the scope of exemptions, and the need for the Administration to set target indicators for assessing the effectiveness of the new measures and for considering the timing to withdraw the measures.

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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