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Panel on Housing

Meeting on 2 March 2015

**Background brief on "Special Stamp Duty and Buyer's Stamp Duty"
prepared by the Legislative Council Secretariat**

Purpose

This paper provides background information on the Special Stamp Duty ("SSD") and Buyer's Stamp Duty ("BSD"), and gives a summary of the views and concerns expressed by Members on the subject.

Background

2. In the past few years, serious housing demand-supply imbalance, coupled with ultra-low interest rates and abundant liquidity under the loose global monetary environment, have seen the local property market out of line with economic fundamentals, with heightened risk of a bubble. Against such background, the Government has introduced several rounds of demand-side management measures, including SSD (in November 2010 and October 2012), BSD (in October 2012) and a doubled ad valorem stamp duty ("DSD") (in February 2013). These measures aim to address the overheated property market, combat speculative activities, ensure healthy and stable development of the property market, and accord priority to the home ownership needs of Hong Kong permanent residents ("HKPR")¹ in the midst of the present tight housing supply.

¹ Under Section 29A of the Stamp Duty Ordinance (Cap. 117), a HKPR means a person

(a) who holds a valid permanent identity card; or

(b) who does not hold a valid permanent identity card but

(i) is, under regulation 25(e) of the Registration of Persons Regulations (Cap. 177 sub. leg. A), not required to register or apply for the issue of an identity card or for the renewal of an identity card under the Registration of Persons Ordinance (Cap. 177) and those Regulations; and

(ii) is entitled to be issued with a permanent identity card if he or she makes an application to the registration officer as defined by section 1A(1) of that Ordinance for that purpose.

3. The demand-side management measures rolled out since November 2010 include –

- (a) SSD² in November 2010 on transactions of residential property acquired on or after 20 November 2010 and resold within 24 months after acquisition;
- (b) an enhancement of SSD in October 2012³ to adjust upward the duty rates and to extend the property holding period in respect of SSD⁴;
- (c) a 15% BSD³ in October 2012 on all residential properties acquired by any person (including companies) except a HKPR acting on his/her own behalf in the acquisition of the property, on top of the existing ad valorem stamp duty and SSD, if applicable; and
- (d) DSD⁵ in February 2013 on residential and non-residential properties acquired by an individual or a company except a HKPR acting on his/her own behalf and does not own any other residential property in Hong Kong at the time of acquisition.

4. Under the demand-side management measures, in acquiring a residential property, a HKPR buyer is exempted from paying BSD, as well as the ad valorem stamp duty at the higher rates (i.e. DSD) if he/she is not a beneficial owner of any other residential property in Hong Kong at that time.

² The Stamp Duty (Amendment) Ordinance 2011 (No. 14 of 2011) was enacted in June 2011 to impose a SSD on residential property transactions acquired on or after 20 November 2010. SSD payable was calculated at the following regressive rates for different holding periods –

- (a) 15% of the amount or value of the consideration if the residential property has been held for six months or less;
- (b) 10% of the amount or value of the consideration if the residential property has been held for more than six months but for 12 months or less; and
- (c) 5% of the amount or value of the consideration if the residential property has been held for more than 12 months but for 24 months or less.

³ The Stamp Duty (Amendment) Ordinance 2014 was enacted in February 2014 to enhance SSD and to impose BSD on non-HKPRs. Both measures apply to residential properties acquired on or after 27 October 2012.

⁴ The duty rates and the holding period in respect of SSD have been adjusted as follows –

- (a) 20% of the amount or value of the consideration if the residential property has been held for six months or less;
- (b) 15% of the amount or value of the consideration if the residential property has been held for more than six months but for 12 months or less; and
- (c) 10% of the amount or value of the consideration if the residential property has been held for more than 12 months but for 36 months or less.

⁵ The Stamp Duty (Amendment) (No. 2) Ordinance 2014 was enacted in July 2014 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. (See LC Paper No. [LS40/12-13](#))

5. The monthly statistics of agreements for sale and purchase of residential units for both primary and secondary sales from November 2010 (i.e. the month when SSD was introduced) to November 2014 are set out in **Appendix I**. According to the Administration⁶, the numbers of average monthly transactions were 4 223 in 2013 and 5 254 for the first 11 months of 2014, which were lower than those of 2011 (7 039 on average monthly) and 2012 (6 778 on average monthly).

6. According to the Administration⁶, increase in property prices has been moderated since the introduction of DSD in February 2013. For the first two months of 2013 (i.e. before the introduction of DSD), property prices increased by 2.7% per month on average. From March 2013 to October 2014, the increase was 0.6% per month on average. Besides, stamp duty statistics from the Inland Revenue Department indicated that the number of short-term resale transactions (including confirmor transactions and resale within 24 months) remained at a low level in the third quarter of 2014, with a monthly average of 84 cases, or 1.2% of the total transactions. This represented a sharp decrease from the monthly average of 2 661 cases (or 20% of the total transactions) during January to November 2010 (i.e. before the introduction of SSD). Also, purchases of residential property by non-local individuals and non-local companies stood at a monthly average of 126 cases, or only 1.7% of the total transactions, in the third quarter of 2014, markedly below the monthly average of 365 cases (or 4.5% of the total transactions) from January to October 2012 (i.e. before the introduction of BSD). It could be seen that the demand-side management measures helped stabilize the residential property market, and were effective in combating short-term speculative activities and curbing external demands.

7. The number of residential property transactions chargeable to SSD and BSD as well as the amount of stamp duty involved in the period since the implementation of the measures (up to November 2014) are set out in **Appendix II**.

8. The Administration has also pointed out that the demand-side management measures were extraordinary measures introduced under exceptional circumstances. It undertook to review the demand-side management measures one year after the passage of the relevant Amendment Bills that promulgated the demand-side management measures and report the outcome to the Legislative Council ("LegCo").

⁶ Written reply by the Secretary for Transport and Housing to a question raised by Dr Hon LAM Tai-fai at the LegCo meeting of 17 December 2014 (<http://www.info.gov.hk/gia/general/201412/17/P201412170537.htm>)

Members' views and concerns

9. The Panel on Housing and the Panel on Financial Affairs were briefed on the proposals pertaining to the Stamp Duty (Amendment) Bill 2012 (i.e. SSD and BSD in October 2012) at the joint meeting held on 2 November 2012. The Administration introduced the Stamp Duty (Amendment) Bill 2012⁷ into LegCo in January 2013. The Bill had been scrutinized by a Bills Committee ("the Bills Committee") and was passed by LegCo on 22 February 2014 with amendments as proposed by the Administration. Members of the Bills Committee in general supported the policy intent of the Bill to curb short-term speculative activities, to accord priority to the home ownership needs of HKPRs, and to rein in the exuberance of the residential property market so as to ensure its healthy and stable development. The major views and concerns expressed by members at the joint meeting of the two Panels and the Bills Committee are summarized in the ensuing paragraphs.

Effectiveness of the proposed measures

10. Amidst an extremely low interest rate environment and persistently large fund inflow into Hong Kong, some members were doubtful whether the proposed measures would be effective in curbing speculative activities. They were worried that the effects of the measures might be limited and short-lived, in particular, given the high liquidity of Mainland buyers who could ride on the appreciation of Renminbi to offset the impact of an increased investment cost. Some members commented that these measures had only caused the number of transactions to shrink significantly. With a severe shortage of housing and land supply, these measures not only failed to help members of the public purchased homes, but had also created grievances in society. It was also observed that some property developers had launched different business tactics to counteract the impact of the proposed measures on sales, such as offering to pay BSD for non-HKPR flat buyers. Some members however urged the Administration to formulate tougher measures to address the overheated property market. Meanwhile, the Administration should make a conscious effort to increase housing supply on the other hand.

11. The Administration advised that it would continue to closely monitor development in the market and price trends in assessing the effectiveness of the measures. It would not rule out the possibility of introducing further measures to tackle the overheated property market. On land supply, as stated in the Administration's paper on initiatives of Development Bureau in the 2015 Policy Address, various land use reviews have identified in total some 150 potential

⁷ The proposal to increase the ad valorem stamp duty rates on transactions for residential and non-residential properties acquired on or after 23 February 2013 (i.e. DSD) was covered in another Bill, namely the Stamp Duty (Amendment) Bill 2013. The Bill was in charge of by the Secretary for Financial Services and the Treasury and a separate Bills Committee was formed to study the Bill. The Bill was passed by LegCo on 15 July 2014.

housing sites, most of which may be made available for housing development in the five years of 2014-15 to 2018-19 for providing 210 000 flats (over 70% for public housing units), subject to timely amendments to their respective statutory plans for change of land use and/or increase in development intensity. On private housing, according to the latest projection in December 2014 as set out in the 2015 Policy Address, the housing supply from the first-hand private residential property market for the coming three to four years is approximately 74 000 units, which is the highest on record.

Impact on genuine home buyers and sellers

12. Given that BSD would apply to residential properties acquired by companies (irrespective of whether these companies were held by HKPR or otherwise), there were concerns that the proposed measures might indiscriminately affect genuine home buyers, such as HKPR home-buyers acquiring residential properties in the name of companies, and overseas companies purchasing residential properties in Hong Kong for use as staff quarters. Some members were worried that the measures might unintentionally convey a message to the market that the taxation policies of Hong Kong were inclined towards the interests of HKPRs over non-HKPRs, which might adversely affect investment by overseas companies in Hong Kong. There were also suggestions that the Administration should grant exemptions from BSD for company buyers whose directors were solely HKPRs, and for genuine home-buyers who sold their properties to meet their emergency needs. Some members further requested for the inclusion of anti-tax avoidance provisions in the Bill to prevent tax evasion involving the issue of share transfer to effect property transactions.

13. According to the Administration, exempting local companies from BSD might lead to tax evasion as property transfer to non-HKPRs could be effected through a transfer of company shares which was not BSD-chargeable. Also, exemptions based on personal circumstances would deviate fundamentally from the operation of the present taxation system and render the BSD regime too complicated to operate effectively to achieve the desired results. The Administration pointed out that whilst it was understandable that the proposed BSD might bring about inconvenience to foreign companies and increase their investment cost, the measure was warranted at the current unusual time to stabilize the property market.

Application of BSD to guardians and trustees of HKPR minors and mentally incapacitated persons

14. The Bills Committee noted that, in order to meet the home ownership needs of HKPR minors or mentally incapacitated persons, the Bill proposed that HKPR minors or mentally incapacitated persons who acquired residential property through their guardians or trustees could be exempted from BSD.

Some members were gravely concerned that such an exemption might be vulnerable to abuse. Non-HKPRs or parents of "doubly non-permanent resident children" might circumvent BSD by setting up a trust, which would undermine the effectiveness of BSD.

15. In the light of the Bills Committee' concern, the Administration took over Hon Mrs Regina IP's proposed Committee stage amendment ("CSA"), which was passed in Council, to remove the BSD exemption for the acquisition of residential properties made on behalf of HKPR minors.

BSD refund mechanism for redevelopment

16. The Bills Committee noted that a person or a company who had paid BSD in respect of an instrument effecting the acquisition of a residential property for redevelopment purpose might apply for a refund of the BSD payment, provided that the construction of the redevelopment project was completed within six years, or within the time extension as permitted under the Bill. The "six-year period" would start to run after the entire lot to be redeveloped had been acquired⁸.

17. The Bills Committee considered that the six-year requirement under the BSD refund mechanism for redevelopment proposed by the Administration was not flexible enough to cater for the practical steps and actual operation involved in redevelopment. Some members also expressed concern that requiring private developers to pay BSD as and when individual units on the lot were acquired would add to the cost of redevelopment, thereby dampening private developers' interest in redevelopment.

18. Having regard to members' and deputations' views on redevelopment and in pursuance of the policy intent to facilitate redevelopment, the Administration moved a CSA, which was passed in Council, to enhance the refund mechanism. Under the enhanced mechanism, a developer might apply for a refund of the BSD paid after the developer concerned had acquired the entire lot to be redeveloped, AND that the developer had either obtained the Building Authority ("BA")'s consent to commence any foundation work for the lot; OR has demolished all the original structure(s) on the lot (other than a building the demolition of which is prohibited under any Ordinance) and obtained BA's approval of the building plan for the redevelopment.

⁸ If the redevelopment project involved more than one lots, the period would not start until the last lot had been acquired. Once the development had been granted the first Occupation Permit within the "six-year period", the whole development would be regarded as satisfying the refund requirement.

Adjustment of SSD and BSD rates

19. On the adjustment of SSD and BSD rates, the Administration pointed out that the demand-side management measures were extraordinary measures to respond to exceptional circumstances. It was important that such measures could be reversed as and when it was appropriate. Accordingly, the Bill provided that adjustments to the SSD and BSD rates should be made by means of subsidiary legislation subject to negative vetting by LegCo, in order to have the necessary flexibility to adjust the applicable rates (to zero if necessary) in a timely manner with reference to the market situation.

20. On 14 February 2014, the Secretary for Transport and Housing ("STH") announced that he would in his speech on the resumption of the Second Reading debate of the Bill give a formal undertaking that while retaining the negative vetting mechanism in the Bill for future adjustments of the SSD or the BSD rates under the new section 63A in the Bill, any proposed increase in SSD or BSD rates in future would be taken forward by way of a bill to amend the Stamp Duty Ordinance (Cap. 117) ("SDO") as in the present case while downward adjustments (reducing or withdrawing the rates by reducing them to zero) would be effected by way of subsidiary legislation subject to negative vetting under section 34 of the Interpretation and General Clauses Ordinance (Cap. 1). The amended rates effected by notice published in the Gazette under the negative vetting mechanism would come into operation immediately upon its gazettal, subject to subsequent scrutiny (amendments or repeal) by LegCo without retrospective effect.

21. Some Members questioned the legality and enforceability of the undertaking to be made by STH. Taking note of the legal opinion of the Legal Service Division of the LegCo Secretariat that a formal undertaking given by a designated official on behalf of the Government pursuant to Article 62 of the Basic Law would be a statement of intention that was not law and had no legal effect, some members expressed concern that in the event of a deviation from such an undertaking, the matter would unlikely be justiciable in a court of law, and it would then be up to Members of LegCo to pursue through the political process. These members considered it improper that administrative measures or a designated official's undertaking, which was not legally binding and subject only to moral and political sanctions, should take the place of legislation. There was also concern that according to STH, the undertaking was binding on the current term of Government only, the definition of which was unclear.

22. Some Members however pointed out that for policy implementation, it might not always be necessary to rely on legislation. In some precedent cases, the use of administrative measures and the giving of Government undertaking could also achieve the same policy effect.

23. According to the Administration, there were precedent cases in which the Administration, instead of making amendments by subsidiary legislation as provided for in the relevant ordinance, would seek to effect changes by way of an amendment bill⁹. The Administration stressed that it had no intention to sideline the role of LegCo. The use of different legislative approaches for adjusting the relevant rates was put forward so as to strike a balance between addressing Members' general views that any proposed increase in SSD and BSD rates should be subject to more deliberations by LegCo on the one hand and preserving the effectiveness of the demand-side management measures on the other.

Council questions

24. At the Council meetings on 14 November 2012, 3 July 2013, and 30 April and 17 December 2014, Hon Kenneth LEUNG, Dr Hon LAM Tai-fai and Hon Cyd HO raised questions relating to SDO. Issues covered in the questions included revenues from SSD and BSD, whether the Administration had reviewed if the demand-side management measures had weakened Hong Kong's competitiveness, and whether the Administration had formulated any plans to withdraw these measures to deal with the impact brought by a sudden downturn of the property market. The Council questions and the Administration's replies are hyperlinked in **Appendix III**.

Latest development

25. The Administration will brief members on the review of SSD and BSD at the Panel meeting on 2 March 2015.

Relevant papers

26. A list of relevant papers is set out in **Appendix III**.

Council Business Division 1
Legislative Council Secretariat
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⁹ For example, the Dutiable Commodities (Amendment) Regulation 2008 and the Motor Vehicles (First Registration Tax) (Amendment) Bill 2011.

Appendix I

Number of agreements for sale and purchase of residential units (November 2010 to November 2014)

		Primary sales	Secondary sales	Total
2010	Nov	747	12 442	13 189
	Dec	474	8 854	9 328
2011	Jan	296	7 706	8 002
	Feb	486	9 904	10 390
	Mar	1 123	9 333	10 456
	Apr	741	6 894	7 635
	May	2 054	7 627	9 681
	Jun	1 050	7 993	9 043
	Jul	608	4 646	5 254
	Aug	884	4 555	5 439
	Sep	231	4 592	4 823
	Oct	822	3 821	4 643
	Nov	1 189	3 606	4 795
	Dec	1 396	2 905	4 301
2012	Jan	879	2 628	3 507
	Feb	581	3 303	3 884
	Mar	1 435	9 923	11 358
	Apr	804	7 413	8 217
	May	1 092	7 257	8 349
	Jun	827	5 059	5 886
	Jul	1 670	4 039	5 709
	Aug	1 397	6 690	8 087
	Sep	644	6 657	7 301
	Oct	2 264	6 450	8 714
	Nov	1 066	5 969	7 035
	Dec	309	2 977	3 286

		Primary sales	Secondary sales	Total
2013	Jan	632	4 798	5 430
	Feb	1 197	5 110	6 307
	Mar	1 095	3 439	4 534
	Apr	1 045	2 382	3 427
	May	1 328	2 948	4 276
	Jun	135	3 605	3 740
	Jul	211	3 775	3 986
	Aug	546	2 861	3 407
	Sep	871	2 815	3 686
	Oct	773	2 653	3 426
	Nov	1 151	2 639	3 790
	Dec	2 062	2 605	4 667
2014	Jan	1 760	2 728	4 488
	Feb	1 142	2 017	3 159
	Mar	693	2 448	3 141
	Apr	1 136	3 645	4 781
	May	841	4 429	5 270
	Jun	1 375	4 585	5 960
	Jul	2 507	5 285	7 792
	Aug	1 606	4 606	6 212
	Sep	1 182	4 776	5 958
	Oct	1 723	4 466	6 189
	Nov	1 119	3 729	4 848

Source: Written reply by the Secretary for Transport and Housing to a question raised by Dr Hon LAM Tai-fai at the LegCo meeting of 17 December 2014 (<http://www.info.gov.hk/gia/general/201412/17/P201412170537.htm>).

Appendix II

Number of residential property transactions chargeable to SSD and BSD as well as the amount of stamp duty involved in the period since the implementation of the measures and up to November 2014

	Number of residential property transactions (Note 2)	Amount of stamp duty involved (\$million)
Special Stamp Duty ("SSD") (Note 1)	3 838	752
Buyer's Stamp Duty ("BSD")	5 883	10,090

Note 1: Including figures after introducing SSD for the first time in November 2010 and enhanced SSD in October 2012.

Note 2: SSD and BSD are not applicable to non-residential property transactions.

Source: Written reply by the Secretary for Transport and Housing to a question raised by Dr Hon LAM Tai-fai at the LegCo meeting of 17 December 2014 (<http://www.info.gov.hk/gia/general/201412/17/P201412170537.htm>).

Special Stamp Duty and Buyer's Stamp Duty

List of relevant papers

Council/ Committee	Date of meeting	Papers
Panel on Financial Affairs and Panel on Housing	2 November 2012	Legislative Council Brief on "Further measures to Address the Overheated Property Market" issued by the Transport and Housing Bureau (with no file reference) http://www.legco.gov.hk/yr12-13/english/panels/hg/papers/fahg1102-thb201210-e.pdf Minutes of meeting (LC Paper No. CB(1)485/12-13)
--	--	Legislative Council Brief on "Stamp Duty (Amendment) Bill 2012" issued by the Transport and Housing Bureau (with no file reference) http://www.legco.gov.hk/yr12-13/english/bills/brief/b01_brf.pdf
Legislative Council	19 February 2014	Report of the Bills Committee on Stamp Duty (Amendment) Bill 2012 (LC Paper No. CB(1)904/13-14)
Legislative Council	19 March 2014	Addendum to the Report of the Bills Committee on Stamp Duty (Amendment) Bill 2012 (LC Paper No. CB(1)1082/13-14)

Hyperlinks to relevant Council Questions:

Date	Council Question
14 November 2012	Council question raised by Dr Hon LAM Tai-fai http://www.info.gov.hk/gia/general/201211/14/P201211140391.htm

Date	Council Question
14 November 2012	Council question raised by Hon Kenneth LEUNG http://www.info.gov.hk/gia/general/201211/14/P201211140185.htm
3 July 2013	Council question raised by Dr Hon LAM Tai-fai http://www.info.gov.hk/gia/general/201307/03/P201307030431.htm
30 April 2014	Council question raised by Hon Cyd HO http://www.info.gov.hk/gia/general/201404/30/P201404300331.htm
17 December 2014	Council question raised by Dr Hon LAM Tai-fai http://www.info.gov.hk/gia/general/201412/17/P201412170537.htm