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Bills Committee on Stamp Duty (Amendment) Bill 2017

Background brief prepared by the Legislative Council Secretariat

Purpose

This paper provides background information on the Stamp Duty (Amendment) Bill 2017 ("the Bill") which aims to amend the Stamp Duty Ordinance (Cap.117) ("SDO") to introduce a new flat rate of 15% for the ad valorem stamp duty ("AVD") chargeable on residential property transactions, in lieu of the existing AVD rates at Scale 1 set out in SDO, commonly known as "doubled ad valorem stamp duty" ("DSD")¹. It also gives a summary of the discussion by the Panel on Housing ("the Panel") on the relevant legislative proposal.

Background

2. In the past few years, owing to tight local housing demand-supply balance and ultra-low interest rates in the global monetary environment, the local property market is apparently moving away from economic fundamentals, with heightened risks of a property market bubble. To address the demand-supply imbalance, the Administration has strived to increase land supply for new housing through short, medium and long-term means. Meanwhile, the Administration has introduced several rounds of demand-side management measures, including Special Stamp Duty ("SSD") (in November 2010 and October 2012), Buyer's Stamp Duty ("BSD") (in October 2012) and

¹ Under the existing ad valorem stamp duty ("AVD") regime, unless otherwise specified in the Stamp Duty Ordinance (Cap.117) ("SDO"), transactions in respect of immovable properties (**both** residential and non-residential) acquired on or after 23 February 2013 are subject to AVD rates at Scale 1 (i.e. "doubled ad valorem stamp duty" ("DSD")). The major exception is where the subject property is a residential property and the buyer is a Hong Kong Permanent Resident ("HKPR") acting on his/her own behalf and is not a beneficial owner of any other residential property in Hong Kong at the time of acquisition. For such exception or other exceptions/exemptions as specified in SDO, AVD rates at Scale 2 will be applicable.

DSD (in February 2013) to address the overheated property market, combat short-term speculation, curb external demand and reduce investment demand to ensure the healthy and stable development of the property market, and accord priority to the home ownership needs of Hong Kong Permanent Residents ("HKPR")² in the midst of the present tight housing supply.

3. Details of the demand-side management measures as introduced since November 2010 are as follows –

- (a) Imposing a SSD³ in November 2010 on transactions of residential properties acquired on or after 20 November 2010 and resold within 24 months after acquisition;
- (b) Enhancing SSD in October 2012⁴ to adjust upward the duty rates and extending the property holding period in respect of SSD⁵;

² Under Section 29A of SDO, 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 Stamp Duty (Amendment) Ordinance 2011 (No. 14 of 2011) was enacted in June 2011 to impose a Special Stamp Duty ("SSD") on residential properties transactions acquired on or after 20 November 2010. SSD payable is 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.

⁴ The Stamp Duty (Amendment) Ordinance 2014 was enacted in February 2014 to enhance SSD and to impose Buyer's Stamp Duty ("BSD") on non-HKPRs. Both measures apply to residential properties acquired on or after 27 October 2012.

⁵ 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.

- (c) Imposing a 15% BSD⁴ 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 AVD and SSD, if applicable; and
- (d) Imposing a DSD⁶ 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 AVD 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.

5. As pointed out by the Administration⁷, after a brief period of cooling down in the late 2015 and early 2016, the residential property market staged a sharp rebound since April 2016 amid a still tight demand-supply situation and repeated delay in interest rate hike in the United States. The reacceleration of investment demand for residential properties aggravated the already tight demand-supply imbalance, and the risk of a bubble in the market would continue to rise.

Stamp Duty (Amendment) Bill 2017

6. On 4 November 2016, the Administration announced the new measure as set out in paragraph 1 above. The proposal is introduced as a further demand-side management measure to help cool down the residential property

⁶ The Stamp Duty (Amendment) (No. 2) Ordinance 2014 was enacted in July 2014 to impose a higher rate of AVD on certain instruments dealing with residential and non-residential properties acquired on or after 23 February 2013, as follows -

| Property consideration or market value (whichever was the higher) | Doubled AVD rate |
|--|------------------|
| Up to \$2,000,000 | 1.50% |
| \$2,000,001 to \$3,000,000 | 3.00% |
| \$3,000,001 to \$4,000,000 | 4.50% |
| \$4,000,001 to \$6,000,000 | 6.00% |
| \$6,000,001 to \$20,000,000 | 7.50% |
| \$20,000,001 and above | 8.50% |

⁷ Legislative Council Brief on "Further Measure to Address the Overheated Residential Property Market" issued by the Transport and Housing Bureau in November 2016.

market.

7. The Bill received its First Reading at the Council meeting of 8 February 2017, and seeks to amend SDO to –

- (a) impose a flat rate of 15% of AVD ("the New AVD") payable on certain instruments dealing with residential properties executed on or after 5 November 2016, in lieu of the existing AVD rates ranging from 1.5% to 8.5% at Scale 1 in the First Schedule to SDO; and
- (b) provide that certain instruments effecting the exchange of a residential property for a non-residential property would be chargeable with existing AVD rates.

Main provisions of the Bill

8. The main provisions of the Bill are summarized in the following paragraphs.

Adjustment of the ad valorem stamp duty rates

9. Clauses 5 and 7 of the Bill seeks to amend SDO to provide for the applicable AVD rates in the First Schedule to SDO payable for conveyances on sale⁸ and agreements for sale⁹ for both residential and non-residential properties, and to the effect that the New AVD rates would be applicable to residential properties and the existing DSD rates would remain applicable to non-residential properties.

Exchange of a residential property for a non-residential property

10. The Bill proposes to add new sections 29AIA and 29BAB to provide that conveyance on sale and agreement for sale which effect the exchange of a residential property for a non-residential property with the payment of equality money (i.e. the money paid for the difference in value of the properties concerned) by the transferor of the residential property would be chargeable with the existing DSD rates.

⁸ Under section 2 of SDO, "conveyance on sale" means every conveyance whereby any immovable property, upon the sale thereof, is transferred to or vested in a purchaser or any other person on his behalf or by his direction, and includes a foreclosure order.

⁹ The meaning of "agreement for sale" is provided in section 29(A)(1) of SDO and includes an instrument in which a person contracts to sell or purchase immovable property.

11. The effect of the above provisions is summarized in the table below –

| Amount or value of consideration of the property | Existing DSD rates from 23 February 2013* | New AVD rates under the Bill applicable to residential property transactions as from 5 November 2016 |
|---|---|--|
| Up to \$2,000,000 | 1.50% | 15% |
| \$2,000,001 to \$3,000,000 | 3.00% | |
| \$3,000,001 to \$4,000,000 | 4.50% | |
| \$4,000,001 to \$6,000,000 | 6.00% | |
| \$6,000,001 to \$20,000,000 | 7.50% | |
| \$20,000,001 and above | 8.50% | |
| *remain applicable to non-residential properties transactions as from 5 November 2016 and applies to equality money for the exchange of a residential property for a non-residential property paid by the transferor. | | |

Transitional arrangement

12. The Bill adds a new section (new section 72) to provide for transitional arrangements. In gist, if existing DSD is paid on instruments (i.e. conveyance on sale and agreement for sale) dealing with residential properties executed on or after 5 November 2016 and before the date of publication of the enacted SDO in the Gazette ("gazettal date"), the instruments would be required to be stamped with the difference between the existing DSD and the New AVD within 30 days commencing immediately after the gazettal date. In other words, the Inland Revenue Department will record all the property transactions between 5 November 2016 and the date on which the enacted SDO is gazetted. Reminders to demand for the stamp duty underpaid will be issued after the gazettal of the enacted SDO.

Commencement

13. The Bill, if enacted, would be deemed to have come into operation on 5 November 2016.

Discussion by the Panel

14. The Panel was briefed on the proposals pertaining to the Bill at the meeting on 5 December 2016. The major views and concerns raised by members are summarized below.

Effectiveness of the new ad valorem stamp duty

15. Given that under the new measure, the New AVD rate for residential properties with market value of \$2 million or below was 10 times the DSD rate, whereas the New AVD rate for higher-priced flats such as those with market values over \$6 million were only two times the corresponding DSD rates or less, some members were concerned whether the new measure could address the impact of speculative activities for high-priced flats.

16. The Administration advised that DSD had in general doubled the AVD rates at Scale 2, which was charged on a progressive scale. While applying a uniform rate to all residential property transactions might have relatively larger impact on lower-priced flats, the new measure was in line with the policy intent to address exuberance in the mass market in particular.

Refund mechanism under the ad valorem stamp duty regime

17. Some members pointed out that while HKPRs who acquired a new property for replacement of their original one might file partial refund of AVD paid if the original property was disposed of within six months from the date of acquiring the new property, some of these HKPRs might have cash flow problems if they were required to pay the 15% AVD in advance and could only get the refund afterwards. There was also the view that the Administration should consider relaxing the six-month timeframe as it was not practicable for transferees of residential properties to sell their original flat within the timeframe.

18. The Administration replied that the New AVD rate, including the six-month timeframe requirement for stamp duty refund, would not affect a HKPR if he/she did not own any other residential property at the time of acquiring a residential property.

Purchases by non-local buyers

19. Some members expressed concern that continuous depreciation of Renminbi might encourage more Mainland investors to purchase flats in Hong Kong for speculative purposes and enquired whether the Administration would take further measures to curb such external demands.

20. The Administration replied that under the proposed regime, apart from paying the 15% BSD and the 15% New AVD, non-local buyers of residential properties were also required to pay SSD if the relevant transaction involved short-term resale. In addition, while the relevant figures for November 2016 were not available then, the Administration had noticed that after the implementation of the new measure, the housing market sentiment had

somewhat cooled down, and residential property investors had become more cautious in making purchase decisions.

Further measures to address the overheated residential property market

21. Citing cases where land sites reserved for housing development had been left idle for a considerable period, some members urged the Administration to expedite the development of housing sites including those for providing Home Ownership Scheme flats so as to give a signal to the market that it could address the overheated property market. The Administration advised that it would continue to make good use of housing sites and overcome challenges in taking forward public housing development projects.

22. Some members opined that the Administration had not made good use of the rezoned land for providing public housing and urged the Administration to look into the situation. The Administration advised that as stated in the Long Term Housing Strategy Annual Progress Report 2016, the public-private split of 60:40 would continue to be adopted in the ten-year housing supply target. The Administration had all along paid due regard to the home ownership aspirations of the community.

Latest development

23. At the House Committee meeting held on 10 February 2017, Members agreed to form a Bills Committee to study the Bill.

Relevant Papers

24. A list of relevant papers is in the **Appendix**.

Appendix

List of relevant papers

| Date | Event | Paper |
|------------------------------|---------------------------|--|
| 5 December 2016 | Panel on Housing | <p>Legislative Council Brief on "Further measures to address the overheated residential property market" issued by the Transport and Housing Bureau</p> <p>http://www.legco.gov.hk/yr16-17/english/panels/hg/papers/hg20161205-thb201611-e.pdf</p> <p>Background brief on measures to address the overheated residential property market prepared by the Legislative Council Secretariat (LC Paper No. CB(1)217/16-17(04))</p> <p>Minutes of meeting (LC Paper No. CB(1)506/16-17)</p> |
| January 2017 (issue date) | Legislative Council Brief | <p>Legislative Council Brief on "Stamp Duty (Amendment) Bill 2017" issued by the Transport and Housing Bureau</p> <p>(File Ref.: HDCR4-3/PH/1-10/0-1)</p> |
| 10 February 2017 | House Committee | <p>Legal Service Division Report on Stamp Duty (Amendment) Bill 2017</p> <p>(LC Paper No. LS31/16-17)</p> |