Written Submissions

By

THE HONG KONG CONVEYANCING &
PROPERTY LAW ASSOCIATION LIMITED

on

Stamp Duty (Amendment) Bill 2017

21 March 2017

Submissions on Stamp Duty (Amendment) Bill 2017 (the "Bill")

1. Our Association notes that the core measure of the Bill is the implementation of a flat 15% ad valorem stamp duty ("AVD") rate for the sale and purchase of residential properties, replacing the current doubled stamp duty scale while retaining the exemption for a Hong Kong permanent resident ("HKPR") buyer who is acting on his/her own behalf and is not a beneficial owner of any other residential property. By effecting a proportionately larger increase in the stamp duty rate for lower-priced properties than higher-priced properties, the Administration intends the Bill to target demand and curb speculation in the said lower-priced residences.

2. As an association of legal practitioners in conveyancing law, we naturally hope to see a healthy property market in Hong Kong, with a steady flow of transactions across all property price ranges. We do not think this is the case in recent years, with a decrease in overall transaction levels and a relatively small number of large transactions distorting overall property prices. However, we are uncertain if the Bill will achieve its intended effect and steer the Hong Kong property market towards a healthier state.

3. The Bill is slated to come into effect retrospectively on 5 November 2016, with residential property transactions after that date subject to a flat AVD of 15%. Despite public knowledge of this, residential property prices have continued to rise precipitously since November 2016, suggesting that the impending measures of the Bill have not significantly deterred speculation and may continue not to do so after the Bill's enactment. Annex C of the Legislative Council Brief for the Bill ("the Brief") suggested however that the proposed increase in the AVD rates should produce an 'immediate and visible effect in further deterring investment demand and thus curbing transactions'. We would urge the Administration to let the public have figures to show such 'immediate and visible effect' for the purpose of considering the Bill.

The 15% flat rate

4. Regarding the 15% flat rate itself, it is our view that it radically deviates from the established progressive scale and is likely to create further unpredictable effects in the property market, such as removing the impetus for parties to a transaction to keep the price of the property below the threshold of a higher stamp duty bracket. We understand that the flat rate's intended purpose is to "*address*

exuberance in the mass market" as stated in the Brief, but we consider that it will have relatively little effect on major, non-HKPR speculators who in our view are the major source of distortion in the current residential property market. They will simply absorb the AVD as part of their acquisition costs, which in turn will increase the upward momentum of property prices. We do not disagree with Annex C of the Brief that non-HKPR residents and companies constitute a small proportion of the overall transactions, but even so, the magnitude of those transactions may have a distorting effect on the market. Meanwhile, the less pecunious parties whom the flat rate would impact the most would also likely be those most impacted by current property prices, and whom the Bill should intend to aid.

5. The Association also notes that the previously mentioned exemption for HKPRs under the existing DSD regime would also apply in the case of a transaction of multiple residential properties in a single instrument. In our view this provides a potential loophole that can be exploited by large-scale speculators and should be addressed. Pure property transaction numbers also disregard the property speculation that takes place through the sale and purchase of shares in property holding shell companies.

Addressing root causes

6. It is also our view that the demand-curbing measures of the Bill may not address the principal causes of high property prices: the lack of housing supply, and the increasing flow of "hot" money into Hong Kong and the accompanying rise of large-scale and resourceful speculators. The implementation of the Special Stamp Duty has further restricted supply due to potential sellers withholding residential property from the market. Furthermore, we consider global economic conditions such as low interest rates and devaluation of the Renminbi to be significant contributing factors to rising investment demand which go beyond Hong Kong's efforts alone to address.

Potential disputes over interests

7. A further concern on the first-time buyer exemption to be maintained by the Bill is its increased importance in light of the resultant rise in the cost of property. We predict that more people will seek to take advantage of the exemption by purchasing in the name of a HKPR who has no other residential property, while at the same time pooling money between relatives to pay for the purchase. Although the purchaser should be acting on his/her own behalf in the acquisition of the property in order to be eligible for the exemption, such practices are not

uncommon and will create situations where parties may later come into dispute over the multiple beneficial interests created over the property by their monetary contributions. Such disputing parties are often close members of the same family and we are concerned that the increase in such legal disputes would further exacerbate social acrimony.

Retroactive implementation

8. We also have concerns over the retroactive effect of the Bill and the 30-day period after the gazettal date for paying additional stamp duty, which means that all the transactions between 5 November 2016 and the eventual gazettal date must be re-processed at the Stamp Office within 30 days, placing an enormous workload on the Stamp Office as well as on conveyancer law firms. Our experience with the payment of additional stamp duty in the previous rounds of management measures shows a potential months-long delay with the issuance of certificates for payment of additional stamp duty, which has created problems for conveyancing processes that require the proof of due payment of stamp duty on title documents, such as in sales and mortgages. We request that the Government take measures to minimize such processing delays in the implementation of the Bill.

Drafting of the Bill

9. Touching upon the technical side of the Bill, we also note that the new Sections 29AI and 29BA proposed in Clauses 5 and 7 of the Bill use the language that "*if the property concerned [in a conveyance on sale or an agreement for sale] is non-residential property*", the existing DSD rates will apply, whereas the new flat rate will apply "*in any other case.*" But there may be other cases in which the flat rate may not be applicable. For example, how will stamp duty be assessed if a conveyance on sale or agreement for sale concerns both non-residential and residential properties? Similar queries are currently addressed by the Inland Revenue Department via Interpretation and Practice Notes and FAQs on its website. Nevertheless such guidelines and notes lack the authority of legislation and therefore inject unnecessary uncertainty into the situation. Here we urge the Administration to explicitly incorporate the Inland Revenue Department's policy into the Bill.

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