For discussion
on 1 April 2019

Legislative Council Panel on Housing

Introduction of "Special Rates" on
Vacant First-Hand Private Residential Units

Purpose

The Government proposes amending the Rating Ordinance (Cap. 116) for the introduction of "Special Rates" on vacant first-hand private residential units. This paper sets out the key legislative proposals and seeks Members' views on them.

Background

2. The Chief Executive announced six new housing initiatives on 29 June 2018. One of the initiatives was to amend the Rating Ordinance for the introduction of "Special Rates" on vacant first-hand private residential units. The objective of "Special Rates" is to encourage more timely supply of first-hand private residential units, rather than combating or curbing property prices.

3. To ensure the healthy and stable development of the property market, the Government has been closely monitoring the market situation. With the Government's continued efforts in increasing land supply, the total projected supply in the past few years of first-hand private residential properties for the coming three to four years stayed high at over 90 000 units. However, the Government notes that the number of unsold first-hand private residential units in completed projects has been increasing in recent years, from around 4 000 units at end-March 2013 (around 6% of the then projected supply) to 9 000 units at end-March 2018 (around 9% of the then projected supply), and has maintained at this level. The trend is undesirable in the face of a housing shortage. The Government considers that effective measures have to be taken to encourage developers to expedite the supply of first-hand private residential units in completed projects.

4. We are now preparing the Rating (Amendment) Bill (the Amendment Bill) with a view to introducing the Amendment Bill into the Legislative Council (LegCo) as soon as practicable.

Key Legislative Proposals

Application of "Special Rates"

5. The target units under the "Special Rates" regime are first-hand private residential units with occupation permit (OP) issued for 12 months or more. In other words, "Special Rates" is not applicable to non-residential units or second-hand residential units. First-hand units generally refer to units that have never been assigned. To guard against avoidance of the "Special Rates" by developers through sale of the first-hand residential units to their associated companies, we propose to specify in the Amendment Bill that if the parties to the transaction are associated companies, the relevant unit will still be regarded as a first-hand unit after the transaction and will be subject to the "Special Rates" regime. Making reference to the relevant anti-avoidance provisions under the Residential Properties (First-hand Sales) Ordinance (Cap. 621), we propose to adopt the definition of "associated companies" in the Companies Ordinance (Cap. 622), i.e. in relation to a body corporate, "associated company" means (a) a subsidiary of the body corporate; (b) a holding company of the body corporate; or (c) a subsidiary of such a holding company.

6. We propose making reference to the information set out in the OP to determine whether a unit is a residential unit. We note that while some units can be used for domestic purposes, their nature is different from private residential units. We therefore propose to exempt units permitted for domestic use in certain types of premises, for example –

(a) premises held by the Government or incorporated public officers;
(b) subsidised housing or transitional housing;
(c) premises held by the Urban Renewal Authority (URA) for rehousing eligible persons affected by URA projects;
(d) licensed hotels and guesthouses; and
(e) hospitals, nursing homes, residential care homes for the elderly, residential care homes for persons with disabilities, etc.

Submission of Returns and Payment of "Special Rates"

7. We propose that developers are required to submit annual returns to the Rating and Valuation Department (RVD) in respect of the target units. If a developer has ever held the target units during the past 12 months, he is required to declare the status of the units concerned, including –

(a) whether any agreement for sale and purchase (ASP) or assignment has been made in respect of the unit;

(b) if an ASP or assignment has been made, whether the parties to the transaction are associated companies; and
(c) whether the unit has been rented out for more than six months at or above market rent in the past 12 months.

RVD may, where necessary, require the developers to provide relevant information and documents, such as stamped tenancy agreements, ASPs, assignments, etc., for verification of the details in the returns.

8. RVD will determine whether a developer is required to pay "Special Rates" based on the information reported in the returns. Developers are not liable for payment of "Special Rates" in respect of a unit if the unit has been sold, or has been rented out for over six months at or above market rent in the past 12 months. If otherwise, developers have to pay "Special Rates". "Special Rates" will be collected by RVD annually at two times (i.e. 200%) of the rateable value of the units concerned.

9. As developers can sell uncompleted first-hand residential units by pre-sale, we propose that a unit will be deemed as sold and hence not subject to the "Special Rates" if an ASP has been signed in respect of the unit, notwithstanding that the assignment has yet to be executed. Nevertheless, developers need to notify RVD in the event of subsequent cancellation or termination of the ASP. Depending on the circumstances, developers may need to make back payment for a certain year's "Special Rates".

Objection and Appeal Mechanism

10. We propose to make reference to the objection and appeal mechanism under the existing Rating Ordinance, and specify in the Amendment Bill that should developers disagree with the liability for payment of "Special Rates" or RVD's assessment of the ratable value of the units concerned, they may raise an objection to the Commissioner of Rating and Valuation (the Commissioner). The Commissioner will make a decision upon examination of the relevant justifications. Developers who are dissatisfied with the Commissioner's decision may lodge an appeal to the Lands Tribunal.

Offences and Penalties

11. We propose to specify in the Amendment Bill offences and penalties in relation to the "Special Rates". Regarding relatively minor offences, including failure to submit returns or furnish information to RVD within a specified period, or failure to notify the same within a specified period after cancellation of ASP, we propose that offenders shall be liable on conviction to a fine at level 4 (i.e. $25,000). We also propose to make reference to the Inland Revenue Ordinance (Cap. 112) to empower the Commissioner, depending on the

nature and/or the degree of culpability of the offence and at his discretion, to consider instituting prosecution or compounding the offence. This may help expedite the processing of minor offences.

12. We consider that more severe penalties should be imposed on more serious offences. Our initial proposal is that developers who knowingly make a false statement in the returns shall be guilty of an offence and shall be liable on conviction to a fine at level 6 (i.e. $100,000) and imprisonment for one year. Furthermore, by making reference to the Stamp Duty Ordinance (Cap. 117) and the Residential Properties (First-hand Sales) Ordinance, we preliminarily propose to specify in the Amendment Bill that if such offence is committed with the consent or connivance of an officer (e.g. company director, secretary or manager) of the developer, then the officer concerned also commits the offence and shall be liable to be proceeded against and punished accordingly.

13. With reference to the existing Rating Ordinance, we also propose to specify in the Amendment Bill that any persons convicted of the proposed offences mentioned in paragraphs 11 and 12 above shall, in addition to any penalty imposed therefor, be liable to a fine. The fine should be of treble the amount of "Special Rates" which has been undercharged in consequence of the offence (or which would have been undercharged if the offence has not been detected) at maximum.

Legislative Timetable

14. The Government is now listening to the views of the LegCo Members and various sectors of the community on "Special Rates". At the same time, the Government is preparing the Amendment Bill and plans to introduce the Amendment Bill into LegCo within the 2018-19 legislative year. To allow sufficient time for RVD and the trade to get prepared for the first submission under the "Special Rates" regime, we propose that the Amendment Bill, subsequent to its passage in LegCo, should come into operation three months after its gazettal.

Advice Sought

15. Members are invited to give their views on the above legislative proposals.

Transport and Housing Bureau
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