立法會
Legislative Council

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Bills Committee on Rating (Amendment) Bill 2019

Background brief

Purpose

This paper provides background information on the Rating (Amendment) Bill 2019 (the "Bill"). It also summarizes the major views and concerns expressed by members of the Panel on Housing ("the Panel") on the proposed legislative amendments.

Background

2. According to the Administration, the Government noted that the number of unsold first-hand private residential units in completed projects[1] had 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 had maintained at a similar level. The trend was undesirable in the face of a housing shortage. The Government considers that more effective measures have to be taken to encourage developers to expedite the supply of first-hand private residential units in completed projects. The Chief Executive announced six new housing initiatives on 29 June 2018, one of which was to amend the Rating Ordinance (Cap. 116) for the introduction of "Special Rates"[2] on vacant first-hand private residential units.

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[1] These unsold units may be vacant units, units occupied by the developers for self use or units rented out by developers as serviced apartments.

[2] "Special Rates" will take effect after gazettal of the Amendment Ordinance following passage of the Amendment Bill in the Legislative Council.

The Rating (Amendment) Bill 2019

3. The object of the Bill is to amend the Rating Ordinance (Cap. 116) to introduce "Special Rates" chargeable on certain private residential units that are unsold for a certain period of time after the issue of the occupation permits ("OPs") for the premises, and that are either unleased for a certain period of time or leased to a person below market rent. Under the proposed legislative amendments:

(a) developers of first-hand private residential units with the OP issued for 12 months or more would be required to furnish annual returns to the Rating and Valuation Department ("RVD") on the status of the units;

(b) units that remain unsold and have not been rented out for more than six months during the past 12 months will be subject to "Special Rates"; and

(c) "Special Rates" will be collected by RVD annually at two times (i.e. 200%) the rateable value of the units concerned [3].

4. The Bill was gazetted on 13 September 2019 and received its First Reading at the Legislative Council ("LegCo") meeting of 23 October 2019. The Bill seeks to:

(a) amend the Rating Ordinance (Cap.116) to introduce "Special Rates" on vacant first-hand private residential units;

(b) make related and consequential amendments to the Lands Tribunal Rules (Cap. 17A), Inland Revenue Ordinance (Cap. 112) and the Electronic Transactions Ordinance (Cap. 553); and

(c) provide for related and transitional matters.

5. Details of the major provisions of the Bill are set out in paragraph 18 of the LegCo Brief (File Ref.: HDCR4-3/PH/10-5/30) and paragraphs 7 to 17 of the Legal Service Division Report (LC Paper No. LS4/19-20). If the Bill is passed, the proposed amendments would come into operation on the expiry of three months beginning on the day on which the enacted Ordinance is published in the Gazette.

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[3] LC Paper No. CB(1)771/18-19(03)

Members' views and concerns

6. The Administration consulted the Panel at its meeting on 1 April 2019 on the proposed legislative amendments for introducing "Special Rates" on vacant first-hand private residential units ("the proposal"). The major views and concerns of members are summarized in the ensuing paragraphs.

<u>Vacancy situation of first-hand private residential units</u>

7. Some members expressed scepticism about the seriousness of the vacancy problem of first-hand residential units purported by the Administration and requested for the breakdown of the 9 000 unsold first-hand private residential units recorded at end-March 2018. Members queried whether the number included serviced apartments or units which had been issued with OP for a short period of time only, and whether there was any change in the number since then. The Administration advised that the total number of unsold first-hand residential units in completed projects remained about 9 000 units as at end-December 2018. Of these, about 3 300 units were issued with OP between 2011 and 2016, about 2 700 units with OP issued in 2017 and about 3 000 units with OP issued in 2018.

<u>Effectiveness of the proposal</u>

8. Some members opined that the implementation of the proposal would not have significant impact on developers, nor would it help increase the private residential flats supply and in addressing the high flat prices. Developers might transfer the cost of paying the "Special Rates" to customers, resulting in higher first-hand residential unit prices in future. Members opined that the problem of high flat prices stemmed from the Government's "high land-price policy" and slow progress in putting up the land under its control for sale.

9. The Administration advised that the proposal did not aim at targeting developers or suppressing flat prices. The about 9 000 unsold units constituted a significant proportion of the projected supply of first-hand private residential properties in the coming few years, and the proposal would help expedite the supply of such housing units. The Administration stressed that the Government did not have a "high land-price policy". Under the established mechanism for safeguarding the public purse, the Government would not sell a piece of land if no bid reached the reserve price.

Impacts of the proposal on the market

10. There were views that the "Special Rates" regime was in conflict with the principle of free market economy in various ways. For example, if "Special Rates" was introduced, even if the property market was in a downturn, developers might still put up all the unsold units for sale taking into account the property market situation, which might affect the market adversely. Developers might face difficulties in dealing with units which might remain unsold by the time of the introduction of the "Special Rates" regime, and might also be reluctant to bid for land for undertaking new private housing development projects, resulting in a reduced supply of private flats and a continued increase in flat prices in future.

11. The Administration advised that there were examples where governments in countries which advocated the principle of free market economy had introduced vacancy tax in their cities, such as Vancouver and Melbourne. Based on the Administration's latest projection, the supply of first-hand private residential units for the coming three to four years was about 93 000 units. As the initiative of allocating 70% of housing units on the Government's newly developed land to public housing development might put pressure on the future supply of private flats, it was an appropriate time for the Administration to introduce "Special Rates" with a view to encouraging the timely supply of first-hand private residential units.

Extending vacancy tax to second-hand residential properties

12. In view that the high and increasing flat prices and rents lied with the demand-supply imbalance in housing, some members opined that in addition to the proposed "Special Rates", the Administration should consider introducing tax on vacant second-hand residential properties, so as to increase the cost for property owners to keep their flats vacant, thereby releasing more residential properties into the market. In addition, members opined that the Administration should take effective measures to suppress the external investment demand for local residential properties. In this regard, the Panel passed a motion urging the Government to examine the introduction of vacancy tax on second-hand residential properties held by non-Hong Kong residents or non-Hong Kong companies in order to curb their speculation of residential properties.

13. The Administration advised that the overall vacancy rate of private flats (including second-hand flats) had dropped from 4.3% as at end-2012 to 3.7% as at end-2017 and was low compared with the long-term average vacancy rate being 5% over the period from 1997 to 2016. It was a normal market phenomenon that second-hand flats would be left vacant for a short

period of time when landlords searched for buyers or tenants, engaged in price negotiations or refurbished their properties. As such, the introduction of vacancy tax on all residential properties might not effectively help increase the housing supply. As regards the demand for properties from non-local individuals/companies, the Administration advised that under the existing stamp duty regime, the acquisition of residential property by a non-Hong Kong permanent resident (including any companies) was subject to the Buyer's Stamp Duty and the New Residential Stamp Duty, both at a flat rate of 15%, i.e. a stamp duty of 30% in aggregate.

14. The Administration further advised that according to the information provided by the Inland Revenue Department, in the first four months of 2018, the number of residential property transactions involving non-local individuals and non-local companies accounted for only 1% of the total number of transactions, which was lower than 4.5% recorded during the period from January to October 2012 (i.e. before the introduction of the Buyer's Stamp Duty). The Administration considered that the demand-side management measures had been effective in curbing external and investment demands.

15. Some members suggested that to address the difficulties of high and frequent rent increases faced by low-income families living in sub-divided units ("SDUs"), the Administration should provide them with rent subsidies and implement tenancy control targeted at SDUs. When implementing tenancy control, the Administration should introduce vacancy tax on second-hand flats to discourage landlords from withholding their premises for leasing.

16. The Administration reiterated that the overall vacancy rate of private residential properties was low and was significantly lower than the long-term average vacancy rate. In contrast, the Administration was more concerned about the vacancy of first-hand private residential units owned by developers and considered it necessary to introduce "Special Rates" on vacant first-hand private residential flats to expedite the supply of these units.

<u>Suggestion of charging "Special Rates" at progressive rates</u>

17. On members' suggestion that the "Special Rates" should be charged at progressive rates tied to the length of the vacancy period of first-hand private residential units, the Administration considered it important that "Special Rates" be implemented as soon as possible, and the regime be made easy to understand and administer. Compared to the uniform tax rate under the Government's proposal, the suggested progressive tax rates might render the regime too complicated in some circumstances, such as where

developers might intermittently rent out an unsold flat in some years and leave it vacant for some other years.

Application of "Special Rates" to specific situations

18. Members raised enquiries about the charging of the "Special Rates" when (a) two developers rented out their unsold first-hand residential units to each other; and (b) developers signed a tenancy of more than six months for the unsold unit with one of their staff who might not live in the unit and offered a subsidy to such staff covering the rent that the staff had paid. Members also pointed out the possibility of avoiding the "Special Rates" if developers provided their unsold first-hand residential units to staff members as quarters or withheld their applications for OPs for completed units.

19. Regarding these enquiries and concerns, the Administration advised that making false statement to the Government about the status of an unsold first-hand residential unit was one of the offences under the proposed legislative framework. It was an internal matter for developers to provide employment benefits to their staff. Developers might not be liable for payment of "Special Rates" if their unsold units were rented out at or above market rent to individuals, such as their staff member, under a formal tenancy agreement. Moreover, the significant investment in residential development projects should be a strong incentive for developers to apply for OPs and to sell or rent out the first-hand units as soon as possible.

Target units and vacancy period under the "Special Rates" regime

20. Some members suggested that the proposed 12-month period of holding an unsold unit with OP on which Special Rates payment was triggered should be shortened to six months to encourage developers to put their units up for sale at lower prices. Some other members opined that the proposed 12-month period was unfair to developers as it took time for them to carry out fitting-out works in their units before selling or renting them out. These members also suggested that the target units under the proposed "Special Rates" regime should be limited to those unsold first-hand private residential units that the general public could afford rather than also including large-sized or luxurious flats.

21. On these suggestions, the Administration advised that in working out the proposal, it had strived to balance the needs for expediting the supply of completed first-hand private flats and maintaining the smooth operation of the market, such as developers' need to search for buyers or tenants or carry out fitting-out works, etc. It considered the proposed 12-month period

appropriate. As the pre-sale period of uncompleted residential properties could be up to 30 months in advance of the anticipated completion date, developers could dispose of their residential units by way of pre-sale. Some members of the public might wish to sell their smaller flats and purchase larger ones. The current proposal would encourage the supply of first-hand private residential units of all sizes.

Offences and penalties under the proposal

22. Some members opined that the proposed penalties imposed on developers who knowingly made a false statement in the annual returns submitted to the Government in respect of unsold units, i.e. a fine of $100,000 and imprisonment for one year, were too light compared with the penalties imposed for public housing residents' omissions in their income and asset declarations, or for contraventions of the prohibitions against misrepresentation or dissemination of false information under the Residential Properties (First-hand Sales) Ordinance (Cap. 621). Members enquired whether the Administration would consider a higher fine, such as multiples of the rateable value of the unit concerned, in order to enhance the deterrent effect. The Administration responded that it considered the proposed penalties suitable and reasonable with deterrent effect.

Delayed completion of residential development projects

23. Some members opined that developers might deliberately delay the building construction works for the units in their residential development projects to avoid the "Special Rates". Members asked about the penalties that could be imposed on developers who did not complete the construction of the first-hand residential units within a period specified under the relevant legislation.

24. The Administration replied that for a residential development project, the lot owner was required to complete the construction of the minimum gross floor area specified in the land grant or lease conditions and obtain an OP from the Building Authority within the Building Covenant ("BC") period specified in the land grant or lease conditions. The lot owner might apply to the Lands Department ("LandsD") for an extension of the BC period with justifications, and if the application was approved, the applicant would be required to comply with the conditions imposed by LandsD, including the payment of premium.

Transactions between associated companies

25. Some members opined that one of the ways that developers could avoid the "Special Rates" was by renting out their unsold units to their associated companies for over six months at or above market rent every year.

26. The Administration replied that to guard against avoidance of the "Special Rates" by developers through sale of the first-hand residential units to their associated companies, the Administration proposed to specify in the Bill that if the parties to a relevant transaction were associated companies, the relevant unit would still be regarded as a first-hand unit after the transaction and would be subject to the "Special Rates" regime. The Administration proposed to adopt the definition of "associated companies" in the Companies Ordinance (Cap. 622), i.e. in relation to a body corporate, an "associated company" was a subsidiary of the body corporate, a holding company of the body corporate, or a subsidiary of such a holding company.

Rates concession and profits tax deduction

27. Some members opined that on implementation of the proposal, the Administration should exclude the unsold vacant first-hand private residential units from any rates concession measures. Some other members opined that developers should not be allowed to claim profits tax deduction for the payment of "Special Rates" with respect to their unsold first-hand residential units. The Administration advised that as General Rates and the proposed "Special Rates" served different purposes and were collected in different ways, issues about these two rates should be dealt with separately. The Administration undertook to consider the profits tax deduction matter when preparing the Bill.

Relevant questions raised at Council meetings

28. At the LegCo meetings of 27 March 2019 and 19 June 2019, Hon Dennis KWOK and Hon CHAN Hak-kan raised written questions respectively on issues relating to the introduction of "Special Rates" on vacant first-hand private residential units. Details of the questions and the Administration's replies are given in the hyperlinks in the **Appendix**.

Latest development

29. At the House Committee meeting on 8 May 2020, Members agreed to form a Bills Committee to study the Bill.

Relevant papers

30. A list of relevant papers is set out in the **Appendix**.

Council Business Division 1
Legislative Council Secretariat
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Appendix

List of relevant papers

Date	Council/ Committee	Papers
June 2018	Panel on Housing and Panel on Development	Administration's paper on Government's new initiatives on housing (LC Paper No. CB(1)1210/17-18(01))
22 January 2019	Subcommittee to Follow Up Issues Related to Inadequate Housing and Relevant Housing Policies	Administration's paper on Measures alleviating the housing difficulties of inadequately housed households (LC Paper No. CB(1)485/18-19(02))
27 March 2019 19 June 2019	Council	Council Questions relating to the introduction of "Special Rates" on vacant first-hand private residential units (Hansard pages 8008-8013) (Hansard pages 11635-11639)
1 April 2019	Panel on Housing	Administration's paper on "Introduction of "Special Rates" on vacant first-hand private residential units" [LC Paper No. CB(1)771/18-19(03)] Minutes of the meeting [LC Paper No. CB(1)1255/18-19]
23 October 2019	The Rating (Amendment) Bill 2019 was introduced into the Legislative Council	The Bill Legislative Council Brief [File Ref.: HDCR4-3/PH/10-5/30] Legal Service Division Report [LC Paper No. LS4/19-20]