

# 立法會

## *Legislative Council*

LC Paper No. CB(1)845/19-20

Ref: CB1/BC/2/19

### **Paper for the House Committee meeting on 10 July 2020**

### **Report of the Bills Committee on Rating (Amendment) Bill 2019**

#### **Purpose**

This paper reports on the deliberations of the Bills Committee on Rating (Amendment) Bill 2019 ("the Bills Committee") and its decision to discontinue its work.

#### **Background**

2. Under the Rating Ordinance (Cap. 116), all properties in Hong Kong (except for certain exempted properties) are liable to rating assessment, and rates payable for each property are charged at 5% of the assessed rateable value of the property concerned. Under section 21 of Cap. 116, both the owner and the occupier of the property are liable for payment of rates. In the absence of an agreement to the contrary between the owner and the occupier, the liability for payment of rates rests with the occupier.

3. On 29 June 2018, the Chief Executive announced, among other new housing initiatives, the proposed introduction of Special Rates on vacant first-hand private residential units, with a view to encouraging more timely supply of first-hand private residential units in the market. According to the Administration, the number of unsold first-hand private residential units in completed projects has been increasing in recent years.<sup>1</sup> The Administration considers that such trend is undesirable in

---

<sup>1</sup> The increase was from around 4 000 units at end-March 2013 to around 9 000 units at end-March 2018. According to paragraph 2 of LC Paper No. CB(1) 790/19-20(02), the figure as at end-March 2020 was around 10 000 units.

the face of a housing shortage and more effective measures have to be taken to encourage developers to expedite the supply of first-hand private residential units in completed projects. To this end, the Administration proposes to amend Cap. 116 to introduce Special Rates on vacant first-hand private residential units.

### **The Rating (Amendment) Bill 2019**

4. The Rating (Amendment) Bill 2019 ("the Bill") was gazetted on 13 September 2019 and received its First Reading in the Legislative Council ("LegCo") on 23 October 2019. The Bill seeks to amend Cap. 116 to introduce Special Rates chargeable on first-hand private domestic premises that are unsold for a certain period of time after the issue of the occupation permits ("OP") for the premises, and that are either unleased for a certain period of time or leased to a person below market rent; and to provide for related matters.

5. The key features of the Bill are set out in paragraphs 5 to 18 of the LegCo Brief (File Ref.: HDCR4-3/PH/10-5/30) issued by the Transport and Housing Bureau on 11 September 2019. In gist, the Bill seeks to introduce a new Special Rates regime targeting first-owners of first-hand private residential units with OP issued for 12 months or more. A first-owner<sup>2</sup> who holds a specified tenement (namely, a building or structure (or any part thereof) held as a distinct or separate holding and permitted for domestic use under OP) on the last day of a reporting period would be liable to the Commissioner of Rating and Valuation ("CRV") for payment of Special Rates, subject to certain exceptions.<sup>3</sup> The liability for the payment of Special Rates would fall on a first-owner who holds a specified tenement on the last day of the relevant 12-month reporting period, subject to the following exceptions:

---

<sup>2</sup> Under the new section 49B, a first-owner of a specified tenement is the person who holds the specified tenement on its OP date.

<sup>3</sup> Special Rates would not apply to the premises specified in section 2 of the new Schedule 1 to Cap. 116, which include premises held by the Government, subsidized housing and transitional housing, hotels and guesthouses, student quarters in schools and universities, hospitals and residential care homes etc. ("excluded premises").

- (a) where the specified tenement is leased to a person (other than a related party of the first owner) under a stamped tenancy agreement at a rent not less than the market rent;
- (b) where the specified tenement is provided by the first-owner as an employer to an employee of the first-owner as a place of residence;
- (c) where an agreement for sale and purchase of the specified tenement entered into by the first-owner as vendor with another person (other than a related party of the first-owner) as purchaser is in force on the last day of the reporting period;
- (d) where the first-owner does not hold any other specified tenement as a first-owner during the reporting period; or
- (e) where the specified tenement falls within excluded premises.

6. Special rates chargeable on a specified tenement would be calculated at the rate of 200% of the rateable value of the specified tenement as at a certain date. Such rate may be amended by the Secretary for Transport and Housing by notice published in the Gazette. A first-owner who holds any specified tenement at any time during a 12-month reporting period must submit returns to CRV within 28 days after the end of the relevant reporting period. The Bill, if passed, would come into operation on the expiry of three months beginning on the day on which the enacted Amendment Ordinance is published in the Gazette.

### **The Bills Committee**

7. At the meeting of the House Committee held on 8 May 2020, members agreed to form a Bills Committee to study the Bill. Under the chairmanship of Hon Jeffrey LAM Kin-fung, the Bills Committee has held two meetings to examine the Bill. The membership list of the Bills Committee is in the **Appendix**.

8. Members note that if the Second Reading debate on the Bill is to resume at the last Council meeting of 15 July 2020 before the prorogation of the Sixth LegCo, the Bills Committee should complete its work by the end of June 2020. While some members consider that the Bills

Committee should endeavour to complete the scrutiny of the Bill by expediting its work as far as possible, the majority of members have expressed reservation on the feasibility of completing scrutiny of the Bill within such a short period of time. At its second meeting on 23 June 2020, in view that a considerable amount of work remained outstanding, including the need for receiving views on the Bill from the public and stakeholders, and clause-by-clause examination of the Bill (which contains a total of over 40 clauses), the Bills Committee agreed to discontinue its work and report the decision to the House Committee as soon as possible.

### **Deliberations of the Bills Committee**

9. Members' views on the Bill are diverse. While some members have expressed support for the policy intent of the Bill to encourage developers to expedite the supply of first-hand private residential units in completed projects, there are concerns about the basis substantiating this intent and the means of achieving it by introducing a new tax type. The Bills Committee's deliberations are set out in the ensuing paragraphs.

#### Policy rationale and objective

10. Some members agree to the policy intent of the Bill to achieve effective use of available housing resources by increasing the circulation of first-hand private residential units. These members opine that imposing the proposed Special Rates, which for one year, according to the Administration, roughly equals to 5% of the property value,<sup>4</sup> is a mild measure when put in context with the rise in property prices of about 2.4 times in the past 10 years. They hope that the charging of the Special Rates can send a clear signal to the market to prevent hoarding of first-hand private residential units in completed projects. This notwithstanding, other members are skeptical about the connotation of the data on which the Administration based to define the problem that it intends to address by way of introducing the Bill. Noting that the purported 10 000 units of "unsold first-hand private residential units" as at the end of March 2020 may include vacant units and units rented out by developers (e.g. as serviced apartments), members have enquired about the number of vacant units therein as this can shed light on the vacancy situation of first-hand private residential units.

---

<sup>4</sup> See paragraph 12 of the LegCo Brief (File Ref.: HDCR4-3/PH/10-5/30).

11. According to the Administration, there is a continuous upward trend of the number of "unsold first-hand private residential units". The number of "unsold first-hand private residential units" increased from around 4 000 units at end 2012 to 6 000 units at end 2014, and further increased to 9 000 units at end 2017. The latest figure as at end-March 2020 is around 10 000 units. The Administration considers that this continuous upward trend of the number of "unsold first-hand private residential units" is undesirable in the face of the current housing demand-supply imbalance. Therefore, the Administration considers that an effective measure has to be taken to encourage developers to expedite the supply of first-hand private residential units in completed projects to the market.

12. The Administration has further explained that as developers are currently not required to declare the status of the "unsold first-hand private residential units", the Administration does not have information on how many of them are rented out or are for self-use purpose, and would not know the reason for such units to remain unsold/vacant. The Administration remains of the view that as these units have been issued with OP, which implies in principle that developers have completed the building works of the relevant buildings and units, the units can be occupied and put into effective use. However, a number of members have expressed the view that this argument of the Administration may not substantiate as a basis for introducing the proposed Special Rates, being a new tax type with far-reaching consequences on the community. These members also opine that one cannot see signs of hoarding of first-hand private residential units by developers from the statistics provided by the Administration.

13. Members have enquired about the number of unsold first-hand private residential units which would be regarded by the Administration as normal and reasonable, and the anticipated increase in the supply of first-hand private residential units that the Bill, if enacted, could bring about. Regarding these queries, the Administration has reiterated that the policy objective of the Bill is to encourage developers to expedite the supply of completed first-hand private residential units to the market. The Administration does not set a hard target regarding the number of "unsold first-hand private residential units".

Issuing date of Occupation Permit vis-à-vis issuing date of Certificate of Compliance as reference point for applying Special Rates

14. Under the Bill, first-hand private residential units with OP issued for 12 months or more that are unsold, and have not been rented out for 183 days or more in aggregate during the past 12 months will be subject to Special Rates.

15. Members have criticized the Administration for being oblivious to the fact that residential units issued with OPs but not yet issued the Certificates of Compliance ("CC") and refurbished by developers are not yet ready for occupation by tenants and hence not ready to be rented out. Members have asked why the Administration did not adopt the issuing date of CC, instead of the issuing date of OP, as the reference point for determining when the developers should start submitting returns on the status of the units under the Special Rates regime.

16. The Administration considers it appropriate to adopt the issuing date of OP (instead of the issuing date of CC) as the reference point for the following reasons:

- (a) in principle, the issue of an OP implies that the relevant unit can be occupied and put into effective use;
- (b) developers do not have to wait until the issue of CC in order to sell or rent out the units. According to the Consent Scheme, developers may apply to the Lands Department for pre-sale consent at a maximum of 30 months in advance of the completion of a residential property project. Furthermore, starting from 2002, lease conditions in general provide that developers can rent out completed units with OP issued. Developers who are able to fulfill certain requirements (e.g. the tenancy period shall not exceed 10 years) can rent out the units without the need to obtain prior consent from the Director of Lands. In other words, even if CC has not been issued for the development project, the developer may choose to rent out the units after obtaining OP;
- (c) some development or redevelopment projects covered by old leases are not subject to the Consent Scheme. Developers do not have to apply for pre-sale consent or CC prior to

selling these units. Furthermore, even if the development projects are subject to the Consent Scheme, the relevant lease conditions do not specify a time limit for developers to obtain CC. The Administration is concerned that adopting the issuing date of CC as the reference point may induce circumvention, e.g. delay in applying for CC, or even not applying for CC with the Lands Department on the grounds that the relevant units are for rental only; and

- (d) on the contrary, in accordance with the "Building Covenant" clause in the land grant or lease conditions, developers are required to complete the construction of the minimum gross floor area specified in the land grant or lease conditions and obtain the OP within the specified period. Adopting the issuing date of OP as the reference point helps guard against possible circumvention.

17. The Administration considers that developers should have enough time to sell or rent out their first-hand private residential units under the Bill, given that under the existing mechanism, developers may apply for pre-sale consent at a maximum of 30 months in advance of project completion, or may rent out the unit after OP has been issued for the project (regardless of whether CC has been issued for the project).

#### Threshold for exempting Special Rates in the case of rented units

18. As regards units for rent, under the Bill, developers do not have to pay Special Rates in respect of a specified tenement if such tenement is let to a person (other than a related party of the first-owner) under a stamped tenancy agreement at a rent not less than the market rent and for not less than 183 days in aggregate during the reporting period. Members have questioned the basis for setting the said threshold of 183 days but not shorter or longer.

19. The Administration has explained that the arrangement is proposed with a view to allowing developers to supply the units to the market through renting, while minimizing the possibility of circumvention as far as possible. According to the Bill, a reporting period refers to a period of every 12 months. The Administration considers it reasonable and appropriate to set the threshold for renting out a unit at 183 days (i.e. around six months or half of a reporting period); a shorter period may reduce the effectiveness of the measure while a longer period may be over stringent.

Consistency with protection of private property rights under the Basic Law and applicability of proportionality test

20. Some members consider that in essence, the Special Rates regime proposed under the Bill imposes on a first-owner of a specified tenement a restriction to hold (or keep) his/her own property beyond a specified period of time after the day on which the OP for the specified tenement is issued. Those first-owners who do not dispose of their properties in accordance with the proposed provisions would be subject to Special Rates. Evasion of Special Rates may lead to criminal liability.

21. These members cast doubt on whether and how the proposed Special Rates regime would be consistent with Article 6 of the Basic Law ("BL 6") in relation to protecting the right of private ownership of property in accordance with law. Furthermore, Article 105 of the Basic Law ("BL 105") provides that the Hong Kong Special Administrative Region ("HKSAR") shall, in accordance with law, protect the right of individuals and legal persons to the acquisition, use, disposal and inheritance of property and their right to compensation for lawful deprivation of their property. In the light of BL 6 and BL 105, it appears that the Special Rates regime could affect individuals' right in disposal of private property and the right of private ownership of property. Members and the Legal Adviser to the Bills Committee have queried how the proposed Special Rates regime can reconcile with the right of individuals and legal persons in private property under BL 6 and BL 105; and whether the proposed measure could satisfy the four-step proportionality test as laid down in the case of *Hysan Development & Others v Town Planning Board* (2016) 19 HKCFAR 372.

22. The Administration has advised that Special Rates is a kind of tax. Taxation is governed by Article 108 of the Basic Law ("BL 108"). BL 108 provides that HKSAR shall practise an independent taxation system; and HKSAR shall, taking the low tax policy previously pursued in Hong Kong as reference, enact laws on its own concerning types of taxes, tax rates, tax reductions, allowances and exemptions, and other matters of taxation. BL 6 has no application to tax legislation. The Administration considers that the proposed Special Rates regime is consistent with BL 6.



23. On the consistency with BL 105, the Administration has advised that in *Weson Investment Ltd v Commissioner of Inland Revenue* [2007] 2 Hong Kong Law Reports & Digest 567 (CA), the Court of Appeal has clearly established that BL 105 has no application to tax legislation. As explained in the above court case, BL 105 and BL 108 are mutually exclusive. When the Government imposes tax on the individual, of necessity it deprives the individual of his property without any right to compensation. In a similar vein, the argument that tax legislation must satisfy a proportionality test under BL 105 was rejected. Unless the taxation scheme cannot be regarded as genuine, but is in fact a disguised expropriation of property, BL 105 has no application. In view of the above and the fact that Special Rates is a tax, the Administration considers that the proposed Special Rates regime would unlikely engage BL 105 and therefore would not trigger the proportionality test in this context.

#### Other means to combat hoarding

24. Members in general agree that hoarding of first-hand private residential units is undesirable. On the means to combat the unreasonable hoarding of first-hand private residential units, members have asked whether the Administration has considered specifying requirements in the land grant or lease conditions that developers have to sell all first-hand private residential units within a specific timeframe upon completion.

25. The Administration has advised that such approach can only cover residential units built on newly leased land, but cannot regulate residential units built on previously leased land, including "unsold first-hand private residential units" currently in the market. This is not in line with the policy intention of the Administration to expedite the supply of first-hand units by developers through the measures. Furthermore, to require developers to sell all units within a specific timeframe through land grant or lease would preclude the situation of developers assigning the whole building for rental purpose (e.g. serviced apartments) rather than for sale purpose, which may be over stringent. Balancing the pros and cons, the Administration considers it more appropriate to implement the Special Rates measure by way of legislation, and to specify that the relevant measure is applicable to all first-hand private residential units with OP issued.

**Advice sought**

26. Members are invited to note the deliberations of the Bills Committee and its decision to discontinue its work.

Council Business Division 1  
Legislative Council Secretariat  
8 July 2020

**Bills Committee on Rating (Amendment) Bill 2019**

**Membership List \***

<b>Chairman</b>	Hon Jeffrey LAM Kin-fung, GBS, JP
<b>Members</b>	Hon Abraham SHEK Lai-him, GBS, JP Hon Tommy CHEUNG Yu-yan, GBS, JP Hon WONG Ting-kwong, GBS, JP Hon CHAN Hak-kan, BBS, JP Hon Paul TSE Wai-chun, JP Hon Steven HO Chun-yin, BBS Hon Frankie YICK Chi-ming, SBS, JP Hon Christopher CHEUNG Wah-fung, SBS, JP Ir Dr Hon LO Wai-kwok, SBS, MH, JP Hon CHUNG Kwok-pan Hon Jimmy NG Wing-ka, BBS, JP Hon SHIU Ka-fai, JP Hon CHAN Chun-ying, JP Hon LUK Chung-hung, JP Hon LAU Kwok-fan, MH Hon Tony TSE Wai-chuen, BBS
	(Total : 17 members)
<b>Clerk</b>	Mr Derek LO
<b>Legal Adviser</b>	Ms Vanessa CHENG

\* Changes in membership are shown in Annex.

## **Annex to Appendix**

### **Bills Committee on Rating (Amendment) Bill 2019**

#### **Changes in membership**

<b>Member</b>	<b>Relevant date</b>
Hon Kenneth LAU Ip-keung, BBS, MH, JP	Up to 14 June 2020