



## **II. REPORT**

The date of First Reading of the Bill is 23 October 2019. Members may refer to the Legislative Council ("LegCo") Brief (File Ref.: HDCR4-3/PH/10-5/30) issued by the Transport and Housing Bureau on 11 September 2019 for further details.

### **Object of the Bill**

2. The object of the Bill is to amend the Rating Ordinance (Cap. 116) to introduce special rates chargeable on certain private domestic premises ("Special Rates") 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.

### **Background**

3. Under 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.

4. On 29 June 2018, the Chief Executive ("CE") 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 such units. This Bill seeks to implement this new housing initiative. According to paragraph 3 of the LegCo Brief, 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 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 Government proposes to amend Cap. 116 to introduce Special Rates on vacant first-hand private residential units.

### **Provisions of the Bill**

5. The Bill seeks to introduce a new Special Rates regime targeting first-owners of first-hand private residential units with OPs issued for 12 months or

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<sup>1</sup> The increase is 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)1277/18-19(01) dated 19 July 2019, the figure remains at around 9 000 units as at 31 March 2019.

more by adding a new Part XA to Cap. 116. The key features of the new Special Rates regime are set out in the following paragraphs.

6. Under the proposed new Part XA, a first-owner who holds a specified tenement on the last day of a reporting period would be liable to the Commissioner of Rating and Valuation ("CRV") for the payment of Special Rates, subject to certain exceptions. The proposed new Part XA of Cap. 116 consists of seven Divisions.

#### Scope of application of Special Rates

7. Division 1 of the new Part XA (new sections 49A to 49C) provides for the scope of application of Special Rates. The new section 49C proposes that Special Rates would apply to 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 the OP (new section 49A). On the other hand, 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"). Under the new section 49C of Cap. 116, the Secretary for Transport and Housing ("STH") may by notice published in the Gazette amend Schedule 1. Such notice would be subsidiary legislation subject to the negative vetting procedure of LegCo.

#### Payment and calculation of Special Rates

8. Division 3 of the new Part XA (new sections 49J to 49N) provides for the payment of Special Rates.

9. Under the new section 49J, the liability for the payment of Special Rates would fall on a first-owner<sup>2</sup> who holds a specified tenement on the last day of the relevant 12-month reporting period<sup>3</sup>, subject to the following exceptions:

- (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 (new section 49J(2)(a))<sup>4</sup>;

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<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> Under the new section 49A, "reporting period" means a first period or a subsequent period in relation to a specified tenement. A "first period" means either the 12-month period before the date on which the Bill comes into operation or the 12-month period beginning on the OP date of the specified tenement, depending on the OP date of the specified tenement. A "subsequent period" means a period of 12 months beginning on the date immediately after the first period for the specified tenement ends or each successive period of 12 months.

<sup>4</sup> Such lease should be in force for not less than 183 days in aggregate during the reporting period.

- (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 (new section 49J(2)(b))<sup>5</sup>;
- (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<sup>6</sup> (new section 49J(2)(c));
- (d) where the first-owner does not hold any other specified tenement as a first-owner during the reporting period (new section 49J(2)(d)); or
- (e) where the specified tenement is an excluded premise (new section 49J(2)(e)).

10. Under the new section 49J(7), Special Rates chargeable on a specified tenement would be calculated at the rate specified in the new Schedule 2 to Cap. 116 of the rateable value of the specified tenement as at a certain date. The rate proposed in the new Schedule 2 is 200%. Under the new section 53A, STH may by notice amend Schedule 2. Such notice would be subsidiary legislation subject to the negative vetting procedure of LegCo.

11. Under the new section 49L, CRV may issue a demand note to a first-owner, who would be liable for the payment of Special Rates, specifying the amount of Special Rates required to be paid. Failure to pay Special Rates under a demand note would attract an additional charge of not exceeding 10% of the default amount (new section 49M). According to paragraph 12 of the LegCo Brief, based on the average rental yield of 2.4% for residential property in June 2019, Special Rates chargeable for one year would be roughly equal to 5% of the property value.

#### Submission of returns for specified tenements

12. Division 2 of the new Part XA (new sections 49D to 49I) provides for the submission of returns. The new sections 49D and 49E propose that a first-owner who holds any specified tenements at any time during a 12-month reporting period must submit return(s)<sup>7</sup> to CRV within 28 days after the end of the relevant reporting period. The return should set out the matters required under the new section 49F. A person who, without reasonable excuse, fails to submit returns to CRV would be liable on conviction to a fine of \$25,000 (new section 49E(5)).

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<sup>5</sup> Such provision of specified tenement as a place of residence to an employee should be in force for not less than 183 days in aggregate during the reporting period.

<sup>6</sup> If a first-owner assigns a specified tenement to a related party on or after 29 June 2018 (i.e. the date of the announcement of the proposed Special Rates), the related party will become a first-owner liable under the Special Rates regime.

<sup>7</sup> It includes first returns and consolidated first returns (new section 49D), and subsequent returns and consolidated subsequent returns (new section 49E).

## Offences

13. Division 4 of the new Part XA (new sections 49O to 49U) proposes other offences in relation to the implementation of Special Rates. These include knowingly or recklessly making false or misleading statements or representations in returns for specified tenements and documents relating to Special Rates as required by CRV (new section 49O), knowingly or recklessly providing false or misleading information to CRV (new section 49P), providing incorrect information to CRV (new section 49Q) and evasion of Special Rates (new section 49R).

14. The maximum penalties for the offences proposed under the new sections 49O, 49P and 49R would be a fine of \$100,000 and imprisonment for one year upon conviction. If these offences are committed with the consent or connivance of, or is attributable to the neglect or omission of, an officer (e.g. director, shadow director, company secretary, principal officer or manager or a person purporting to act in the above capacities) of the first-owner, then the officer concerned would also commit the offence and would be liable on conviction to the same penalties (new section 49U). A person who commits an offence under new section 49Q would be liable to a fine of \$50,000.

## Objections and Appeals

15. Division 5 of the new Part XA (new sections 49V to 49Y) seeks to provide for the objection mechanism by making reference to the existing Cap. 116. A first-owner who has been served a demand note by CRV and who disagrees with the notional rateable value of the specified tenement concerned or the liability for payment of Special Rates, may object to the demand note by serving a notice of objection on CRV within 28 days of service of the demand note. CRV must within six months thereafter inform the aggrieved person of his/ her decision.

16. If an aggrieved person is dissatisfied with CRV's decision made under Division 5, Division 6 of the new Part XA (new sections 49Z to 49ZD) proposes an appeal mechanism under which the aggrieved person may appeal to the Lands Tribunal within 28 days of service of the notice of CRV's relevant decision.

## Related and consequential amendments

17. The amendments proposed in clauses 7 to 10 of the Bill concern related and consequential amendments to the Lands Tribunal Rules (Cap. 17A), Inland Revenue Ordinance (Cap. 112) and the Electronic Transactions Ordinance (Cap. 553).

## **Commencement**

18. The Bill, if passed, would come into operation on the expiry of three months beginning on the day on which the enacted Ordinance is published in the Gazette.

## **Public Consultation**

19. According to paragraph 21 to the LegCo Brief, following the announcement of the proposed introduction of Special Rates by CE on 29 June 2018, the Administration has arranged meetings and briefing sessions for relevant stakeholders (including the Real Estate Developers Association of Hong Kong, the Law Society of Hong Kong, other professional bodies and various LegCo members), and listened to their views. It is not stated in the LegCo Brief that the Administration has conducted public consultation on the proposed Special Rates.

## **Consultation with LegCo Panel**

20. According to the Clerk to the Panel on Housing, the Panel discussed the Administration's proposal to introduce Special Rates on vacant first-hand private residential units on 1 April 2019. Some members expressed scepticism about the seriousness of the vacancy problem of first-hand residential units purported by the Administration and considered that the proposal was in conflict with market economy. They considered that developers might transfer Special Rates to customers, resulting in higher first-hand residential unit prices. Other members expressed scepticism about the effectiveness of the proposal to address the vacancy problem. 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. There were views that to avoid Special Rates, developers might rent out their unsold units to associated companies or as quarters for their staff, or deliberately withhold the application for OPs.

## **Conclusion**

21. The Legal Service Division is scrutinizing the legal and drafting aspects of the Bill. In view of the concerns expressed by members of the Panel on Housing and that the Bill seeks to introduce a new rates regime in Hong Kong, Members may wish to form a Bills Committee to study the Bill in detail.

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