

立法會
Legislative Council

LC Paper No. LS16/20-21

**Paper for the House Committee Meeting
on 4 December 2020**

**Legal Service Division Report on
Stamp Duty (Amendment) Bill 2020**

I. SUMMARY

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| 1. The Bill | The Bill seeks to amend the Stamp Duty Ordinance (Cap. 117) to decrease the stamp duty on certain instruments dealing with non-residential properties and to make related amendments, in order to give effect to the proposal in paragraph 71 of the 2020 Policy Address delivered by the Chief Executive on 25 November 2020 to abolish the Doubled Ad Valorem Stamp Duty imposed on non-residential properties with effect from 26 November 2020. |
| 2. Public Consultation | The Administration considers that public consultation on the legislative proposal is neither appropriate nor practicable owing to the market sensitivity of the proposal. |
| 3. Consultation with LegCo Panel | The Panel on Financial Affairs has not been consulted on the Bill. |
| 4. Conclusion | No difficulties have been identified in relation to the legal and drafting aspects of the Bill. Members may consider whether a Bills Committee should be formed to study the policy aspects of the Bill in detail. |

II. REPORT

The date of First Reading of the Bill is 2 December 2020. Members may refer to the Legislative Council ("LegCo") Brief (File Ref: TsyB R 183/700-6/11/0 (C)) issued by the Financial Services and the Treasury Bureau in November 2020 for further details.

Object of the Bill

2. The Bill seeks to amend the Stamp Duty Ordinance (Cap. 117) to decrease the stamp duty on certain instruments dealing with non-residential properties and to make related amendments, in order to give effect to the proposal in paragraph 71 of the 2020 Policy Address delivered by the Chief Executive ("CE") on 25 November 2020 to abolish the Doubled Ad Valorem Stamp Duty imposed on non-residential properties with effect from 26 November 2020.

Background

3. Before the enactment of the Stamp Duty (Amendment) (No. 2) Ordinance 2014 ("Amendment Ordinance 2014") in 2014, the sale of immovable property was subject to an ad valorem stamp duty which was at the same rates as those under Scale 2 of head 1(1) or (1A) in the First Schedule to Cap. 117 ("Scale 2 Rates"). Upon the commencement of the Amendment Ordinance 2014, higher ad valorem stamp duty rates, which were at the same rates as those under Part 2 of Scale 1 of head 1(1) or (1A) in the First Schedule to Cap. 117 ("Part 2 of Scale 1 Rates"), were imposed on certain instruments dealing with residential and non-residential properties acquired on or after 23 February 2013.

4. According to paragraphs 5 to 7 of the LegCo Brief, it is apparent to the Administration that an overheating non-residential property market with hectic trading activities and rapidly increasing prices are no longer evident in the prevailing economic climate. In the light of the latest development in the non-residential property market and with a view to providing liquidity to businesses during the economic downturn, CE proposed in the 2020 Policy Address that the ad valorem stamp duty chargeable on certain instruments dealing with non-residential properties be reverted to the Scale 2 Rates applicable before 23 February 2013.

Provisions of the Bill

Decrease of stamp duty on non-residential properties with effect from 26 November 2020

5. The Bill proposes to amend sections 29AI, 29AIA, 29BA and 29BAB of, and the First Schedule to, Cap. 117 to the effect that the following types of instruments dealing with non-residential properties would be chargeable with stamp duty under the Scale 2 Rates, instead of the Part 2 of Scale 1 Rates, i.e. back to the levels before 23 February 2013:

- (a) a conveyance on sale;
- (b) an instrument effecting the exchange of a residential property for a non-residential property, if consideration for equality is paid or given by the person to whom the non-residential property is transferred;
- (c) an agreement for sale; and
- (d) an agreement providing for the exchange of a residential property for a non-residential property, if consideration for equality is paid or given (or agreed to be paid or given) by the person to whom the non-residential property is to be transferred.

6. A comparison of the stamp duty rates under Cap. 117 (in force before 26 November 2020) and the proposed stamp duty rates under the Bill (with effect from 26 November 2020) is set out below:

Stamp duty rates in force before 26 November 2020		Proposed stamp duty rates under the Bill with effect from 26 November 2020	
Amount or value of consideration of non-residential property	Part 2 of Scale 1 Rates	Amount or value of consideration of non-residential property	Scale 2 Rates
Up to \$2,000,000	1.50%	Up to \$2,000,000	\$100
\$2,000,001 to \$2,176,470	\$30,000+20% of the excess over \$2,000,000	\$2,000,001 to \$2,351,760	\$100+10% of the excess over \$2,000,000
\$2,176,471 to \$3,000,000	3.00%	\$2,351,761 to \$3,000,000	1.50%
\$3,000,001 to \$3,290,330	\$90,000+20% of the excess over \$3,000,000	\$3,000,001 to \$3,290,320	\$45,000+10% of the excess over \$3,000,000

Stamp duty rates in force before 26 November 2020		Proposed stamp duty rates under the Bill with effect from 26 November 2020	
Amount or value of consideration of non-residential property	Part 2 of Scale 1 Rates	Amount or value of consideration of non-residential property	Scale 2 Rates
\$3,290,331 to \$4,000,000	4.50%	\$3,290,321 to \$4,000,000	2.25%
\$4,000,001 to \$4,428,580	\$180,000+20% of the excess over \$4,000,000	\$4,000,001 to \$4,428,570	\$90,000+10% of the excess over \$4,000,000
\$4,428,581 to \$6,000,000	6.00%	\$4,428,571 to \$6,000,000	3.00%
\$6,000,001 to \$6,720,000	\$360,000+20% of the excess over \$6,000,000	\$6,000,001 to \$6,720,000	\$180,000+10% of the excess over \$6,000,000
\$6,720,001 to \$20,000,000	7.50%	\$6,720,001 to \$20,000,000	3.75%
\$20,000,001 to \$21,739,130	\$1,500,000+20% of the excess over \$20,000,000	\$20,000,001 to \$21,739,120	\$750,000+10% of the excess over \$20,000,000
\$21,739,131 and above	8.50%	\$21,739,121 and above	4.25%

Transitional arrangements and related technical amendments

7. A new section 74 is proposed to be added to Cap. 117 to provide for transitional arrangements. For an instrument that was executed before 26 November 2020, an agreement for sale that superseded another agreement for sale made between the same parties and on the same terms before 26 November 2020, and a conveyance on sale that was executed in conformity with an agreement for sale made before 26 November 2020, the Part 2 of Scale 1 Rates would continue to apply. The Bill also seeks to make technical amendments to sections 2 and 29A(4) of Cap. 117 for the sake of clarity.

Public Revenue Protection (Stamp Duty) Order 2020 (L.N. 231 of 2020)

8. On the day of delivery of the 2020 Policy Address (i.e. 25 November 2020), CE, after consultation with the Executive Council, made the Public Revenue Protection (Stamp Duty) Order 2020 (L.N. 231 of 2020) ("Order") under section 2 of the Public Revenue Protection Ordinance (Cap. 120) to give immediate effect to the proposed decrease of stamp duty under the Bill. The

Order came into force at the beginning of 26 November 2020. The Schedule to the Order contains a proposed bill to amend Cap. 117, which is identical to the Bill. Members may refer to our report on the Order (LC Paper No. LS14/20-21) for further details of the Order.

Commencement

9. The Bill, if passed, would be deemed to have come into operation on 26 November 2020, i.e. the same date when the Order came into operation.

Public Consultation

10. According to paragraph 19 of the LegCo Brief, public consultation on the legislative proposal is neither appropriate nor practicable owing to the market sensitivity of the proposal.

Consultation with LegCo Panel

11. As advised by the Clerk to the Panel on Financial Affairs, the Panel has not been consulted on the Bill.

Conclusion

12. No difficulties have been identified in relation to the legal and drafting aspects of the Bill. Members may consider whether a Bills Committee should be formed to study the policy aspects of the Bill in detail.

Prepared by

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