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Paper for the House Committee meeting on 19 February 2021

**Report of the Bills Committee on
Stamp Duty (Amendment) Bill 2020**

Purpose

This paper reports the deliberations of the Bills Committee on Stamp Duty (Amendment) Bill 2020 ("the Bills Committee").

Background

2. As explained by the Administration, the Doubled Ad Valorem Stamp Duty ("DSD") was introduced in 2013 to dampen the then local demand for residential and non-residential properties and to narrow the supply-demand gap, and hence contribute to the stable development of the property market. According to the Administration, 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, the Chief Executive ("CE") proposed in the 2020 Policy Address delivered on 25 November 2020 that DSD imposed on non-residential properties be abolished with effect from 26 November 2020.

Stamp Duty (Amendment) Bill 2020

3. The Stamp Duty (Amendment) Bill 2020 ("the Bill"), which received its First Reading at the Council meeting of 2 December 2020, seeks to amend the Stamp Duty Ordinance (Cap. 117) ("the Ordinance") 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 CE's proposal stated in paragraph 2 above. In other words, the Bill proposes to revert the ad valorem stamp duty chargeable on certain instruments dealing with non-residential

properties from the rates under Part 2 of Scale 1 of head 1(1) or (1A) ("Part 2 of Scale 1 Rates") to the rates under Scale 2 of that head ("Scale 2 Rates") in the First Schedule to the Ordinance, i.e. back to the levels before 23 February 2013.

Provisions of the Bill

4. The provisions of the Bill are as follows:

- (a) clause 1 sets out the short title and provides that the Bill, if passed, would be deemed to have come into operation on 26 November 2020;
- (b) clauses 5 to 8 propose to amend sections 29AI, 29AIA, 29BA and 29BAB of the Ordinance respectively to provide that the respective instruments involving non-residential property would be chargeable with stamp duty under Scale 2 Rates instead of Part 2 of Scale 1 Rates; and
- (c) clause 9 proposes to add a new section 74 to the Ordinance to provide for transitional matters. Clause 10 proposes to repeal Part 2 of Scale 1 of head 1(1) and Part 2 of Scale 1 of head 1(1A) in the First Schedule to the Ordinance. Clauses 3 and 4 propose to make technical amendments to sections 2 and 29A(4) of the Ordinance respectively.

A comparison of the stamp duty rates applicable to non-residential property transactions under the Ordinance (in force before 26 November 2020) and the proposed stamp duty rates under the Bill (with effect from 26 November 2020) is in **Appendix I**.

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

5. 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) ("PRPO") to give effect to the proposed decrease of stamp duty under the Bill so long as the Order remains in force. The Order came into force at the beginning of 26 November 2020. The Schedule to the Order contains a proposed bill to amend the Ordinance, which is identical to the Bill.

6. The Order is a temporary measure. By virtue of section 5(2) of PRPO, the Order shall expire and cease to be in force upon:

- (a) the notification in the Gazette of the rejection by Legislative Council of the Bill;
- (b) the notification in the Gazette of the withdrawal of the Bill or the Order;
- (c) the Bill, with or without modification, becoming law in the ordinary manner; or
- (d) the expiration of four months from the day on which the Order came into force,

whichever event first happens.

7. Pursuant to section 7 of PRPO, where the Order ceases to be in force and is not replaced, with or without modification, by the Bill, the stamp duty which was payable immediately before the coming into force of the Order shall become payable in full again.

The Bills Committee

8. The House Committee agreed at its meeting on 4 December 2020 to form a Bills Committee to study the Bill. Hon Jeffrey LAM Kin-fung was elected as Chairman of the Bills Committee. The membership list of the Bills Committee is in **Appendix II**. The Bills Committee has held two meetings, one of which was attended by the Administration to discuss the Bill.

Deliberations of the Bills Committee

9. Members of the Bills Committee in general support the proposal to abolish DSD imposed on non-residential properties under the Bill. In the course of deliberations, members have examined relevant issues including the policy objective of the Bill, the proposed transitional arrangement under the proposed new section 74(2)(b) of the Ordinance, and the demand-side management measures on the residential property market.

Policy objective

10. Members have studied the transaction figures and stamp duty receipts in respect of residential and non-residential properties respectively since the introduction of the demand-side management measures on the property market in 2010, and have examined the extent to which the Administration had achieved its purported objective of introducing DSD in 2013 to dampen local demand for residential and non-residential properties and to narrow the supply-demand gap, and to contribute to the stable development of the property market.

11. The Administration has advised that DSD on residential and non-residential property transactions was introduced in 2013 in response to the then overheated residential and non-residential property markets. For the non-residential property market, transaction volume rose sharply from about 26 000 in 2009-2010 to around 41 000 in 2012-2013. The imposition of DSD on non-residential property transactions had an immediate dampening effect on the market, with transaction volume by and large returning to the 2009-2010 level. The volume of transactions had remained stable thereafter until 2019-2020, when it dropped below 20 000. In view of the said decline in transaction volume as well as falling prices, the Administration considers that the basis for implementing DSD in the non-residential property market is no longer evident in the prevailing economic climate and has decided to abolish DSD for transactions involving such properties.

12. Members have enquired about the extent to which the abolition of DSD on non-residential property transactions in November 2020 pursuant to the Order has achieved the intended objective of facilitating enterprises to cash out by selling non-residential properties to address their financial predicaments or liquidity needs because of the economic downturn.

13. The Administration has advised that at present, relevant consolidated figures compiled by the Rating and Valuation Department on the transactions of non-residential properties since the abolition of DSD have yet to be released. According to the figures from the Stamp Office of the Inland Revenue Department, transaction volume and value of non-residential properties have remained stable since the abolition of DSD took effect in end November 2020.

Transitional arrangement

14. Members note that as a transitional arrangement, the proposed new section 74(2)(b) of the Ordinance provides that the pre-amended Ordinance (i.e. the Ordinance as in force immediately before 26 November 2020) would continue to apply to an agreement for sale that supersedes another agreement for

sale made between the same parties and on the same terms before 26 November 2020. Members have enquired what measures, if any, the Administration will take in order to prevent the parties from easily circumventing such transitional arrangement by entering into a new agreement for sale on different terms (such as by slightly varying the amount of consideration for the property) to supersede the original agreement for sale.

15. The Administration has advised that the proposed section 29A(4) of the Ordinance provides that an agreement for sale would be made on "the same terms" as a previous agreement if, but only if, the agreement for sale and the previous agreement (i) are made in respect of the same immovable property; and (ii) specify the same consideration for the conveyance on sale. Any attempt by the same buyer and seller to enter into a new agreement for sale on different terms to supersede the original agreement for sale executed before 26 November 2020 will generate two stamp duty-chargeable instruments. In other words, the parties concerned will not be able to benefit from an overall smaller stamp duty liability through such an arrangement.

Demand-side management measures on the residential property market and loan-to-value ratio in mortgage

16. Members consider it evident that the demand-side management measures have hard hit the second-hand property market by raising transaction cost, thereby shrinking the supply of second-hand residential properties. The transaction volume of second-hand residential units has dropped from about 120 000 in 2010 to around 50 000 in 2020. The demand-side management measures have also distorted the residential property market, as evidenced in the disproportionate transaction volumes between first-hand and second-hand property units due to the strong demand for first-hand property units and the shrinking second-hand property market. Expressing grave concern about the economic downturn and the imminent large number of cases of bankruptcy, negative equity and winding-up of businesses, members urge the Administration to abolish the demand-side management measures in respect of residential property transactions. Abolishing such measures, in members' view, will facilitate the selling of residential properties by business owners who are encountering financial predicaments or liquidity needs amidst the economic downturn. The Administration should also consider relaxing the loan-to-value ratio for property mortgage loans to enable property-owning businesses to cope with short-term financial needs without having to sell the property concerned.

17. Regarding these views and concerns of members, the Administration has explained that recent adjustments in price and transaction volume in the residential property market have not been as obvious as that in the non-

residential property market. As such, CE announced in the 2020 Policy Address that the Government had no plan to adjust any of the stamp duty rates concerning residential properties. In considering whether demand-side management measures in respect of residential property transactions should be adjusted, the Administration has to take into account a basket of factors, including property prices, transaction volumes and the affordability of residential properties to the general public. The Administration will continue to monitor the development of the property market to ensure that the measures currently in place are necessary to ensure the stable development of the market.

18. As regards the loan-to-value ratio for property mortgage loans, the Administration has advised that as announced in CE's 2019 Policy Address, the cap on the value of the properties eligible for a mortgage loan of maximum cover of 90% loan-to-value ratio under the Mortgage Insurance Programme of the HKMC Insurance Limited has been raised from \$4 million to \$8 million for first-time home buyers.

19. The Financial Services and the Treasury Bureau, which is in charge of the Bill, has undertaken to relay members' views with regard to the demand-side management measures on the residential property market to the other relevant bureaux/departments for consideration.

Proposed amendment to the Bill

20. The Bills Committee and the Administration will not propose any amendment to the Bill.

Resumption of Second Reading debate

21. The Bills Committee raises no objection to the resumption of the Second Reading debate on the Bill at the Council meeting of 17 March 2021.

Advice sought

22. Members are invited to note the deliberations of the Bills Committee.

Comparison of the stamp duty rates under the Stamp Duty Ordinance (Cap. 117) (in force before 26 November 2020) and the proposed stamp duty rates under the Stamp Duty (Amendment) Bill 2020 (with effect from 26 November 2020)

Stamp duty rates in force before 26 November 2020		Proposed stamp duty rates under the Stamp Duty (Amendment) Bill 2020 with effect from 26 November 2020	
Amount or value of consideration of non-residential property	Part 2 of Scale 1 of head 1(1) or (1A) in the First Schedule to the Stamp Duty Ordinance (Cap. 117) ("the Ordinance")	Amount or value of consideration of non-residential property	Scale 2 of head 1(1) or (1A) in the First Schedule to the Ordinance
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
\$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%

Bills Committee on Stamp Duty (Amendment) Bill 2020

Membership List

Chairman Hon Jeffrey LAM Kin-fung, GBS, JP

Members Hon Abraham SHEK Lai-him, GBS, JP
Hon WONG Ting-kwong, GBS, JP
Hon Paul TSE Wai-chun, JP
Hon Christopher CHEUNG Wah-fung, SBS, JP
Hon SHIU Ka-fai, JP
Hon Tony TSE Wai-chuen, BBS, JP

(Total : 7 members)

Clerk Mr Derek LO

Legal Adviser Ms Wendy KAN