

Press release

LCQ9: Levy of profits tax on profits arising from property speculation

Wednesday, November 10, 2010

Following is a question by the Hon Paul Chan Mo-po and a written reply by the Secretary for Financial Services and the Treasury, Professor K C Chan, in the Legislative Council today (November 10):

Question:

Since April 1 this year, the Government has increased the rate of stamp duty on transactions of properties valued at more than \$20 million to 4.25%. On April 21 this year, the Financial Secretary also told this Council that the Inland Revenue Department (IRD) would closely follow up all cases involving speculators profiting from property speculation, and profits tax would be levied on the persons or companies earning profits arising from such transactions. The Financial Secretary also indicated that in 2008-2009, some 4,000 suspected speculation cases required further follow-up action by IRD officers. In this connection, will the Government inform this Council:

(a) of the number of the relevant property transactions recorded and the amount of stamp duty collected by the Government since the aforesaid new rate of stamp duty on property transactions was levied six months ago, and how such figures compare with those of the same period last year;

(b) among the some 4,000 aforesaid suspected speculation cases which IRD has followed up, of the numbers of cases substantiated to be speculation cases, cases pending decision and cases proved not involving speculation; in respect of the substantiated speculation cases, of the amount of tax involved, the amount of tax collected, and the number of cases in which tax was not successfully recovered as well as the Government's follow-up actions; and

(c) in cases where the seller is not a Hong Kong resident or a company registered in Hong Kong, whether the Government will consider requiring the lawyer, when processing the transaction for the seller, to withhold a certain percentage of the seller's proceeds until the seller has paid the profits tax or IRD has issued a certificate confirming that the seller does not need to pay tax?

Reply:

President,

(a) From April 1 to October 31, 2010, the total number of property transactions valued more than \$20 million as recorded by the Stamp Office of the Inland Revenue Department (IRD) was 3,223, representing an increase of 86% over the same period of last year. The amount of stamp duty involved was \$6.16 billion, representing an increase of 127% over the same period of last year.

(b) In 2008-09, 4,300 cases of suspected property speculation were identified through IRD's computer programme and initial review by IRD officers. As at end of October 2010, IRD completed the examination of 3,600 cases with the remaining 700 cases still being processed. Of those 3,600 examined cases, 1,600 cases were considered not taxable. Of the other 2,000 cases found to be chargeable to tax for profits derived from property transactions, 350 cases were already reported in the tax returns filed by the taxpayers. IRD has issued tax assessments for the remaining 1,650 taxable cases, and the amount of profits tax involved is \$410 million. However, IRD does not keep statistics on the amount of profits tax collected in this regard.

For overdue tax, IRD would take various recovery actions immediately, including imposing a surcharge; issuing recovery notices to the third parties (such as the defaulting taxpayer's banker, employer or debtor) requesting them to transfer money held on account of the defaulting taxpayer to IRD for payment of the outstanding tax; and applying to the District Court to institute civil proceedings. If the judgement debt remains unsettled, IRD will issue a writ of fieri facias to levy execution against the movable properties of the defaulting taxpayer; or apply for a charging order on the immovable properties belonging to the defaulting taxpayer. IRD may also initiate bankruptcy or liquidation proceedings for the default cases, and may apply to the District Court for a direction to prevent the defaulting taxpayer from departing Hong Kong.

(c) Hong Kong adopts all along a territorial source principle of taxation, and strives to maintain a fair taxation system. Any persons, irrespective of whether they are residents of Hong Kong or companies incorporated in Hong Kong, carrying on a trade, profession or business in Hong Kong are chargeable to profits tax on their profits arising in or derived from Hong Kong. Imposing withholding tax arrangement only on non-Hong Kong residents and companies incorporated outside Hong Kong for their purchase/sale of Hong Kong properties would violate the fairness principle of Hong Kong's tax regime.

Ends