Press release

LCQ19: Stamp Duty Ordinance

Wednesday, November 14, 2012

Following is a question by the Hon Kenneth Leung and a written reply by the Acting Secretary for Financial Services and the Treasury, Ms Julia Leung, in the Legislative Council today (November 14):

Question:

The current ad valorem stamp duty (SD) on property transactions in Hong Kong ranges from HK$100 to 4.25% of the stated consideration or the market value of the property (whichever is higher)(value of transaction). For residential property acquired on or after November 20, 2010 and disposed of within 24 months (holding period), Special Stamp Duty (SSD) at a rate from 15% to 5% of the value of transaction is also payable on top of SD. On October 26, the Government announced that it would increase the SSD rates and extend the holding period. Some members of the public have pointed out to me that SD and SSD could be evaded by effecting property transactions through transfer of shares in offshore companies holding the properties as change in ownership of such companies could not be traced. In this connection, will the Government inform this Council:

(a) whether it has tolerated the tax evasion arrangement for years; if so, of the reasons for that;

(b) of the estimated amounts of SD and SSD foregone in the past five financial years as a result of the tax evasion arrangement; and

(c) whether the Government has any plan to crack down on the tax evasion arrangement by amending the Stamp Duty Ordinance (Cap 117); if not, of the reasons for that?

Reply:

President,

(a) to (c) According to the existing Stamp Duty Ordinance (Cap 117), stamp duty is not chargeable on transfers of non-Hong Kong stocks (including transfers of shares which are not required to be registered in Hong Kong). As such, the Inland Revenue

Department (IRD) does not have information regarding the transfers of shares of overseas companies which do not maintain their share registers in Hong Kong.

Nevertheless, we have been monitoring property transactions closely. According to IRD's information, in the first nine months of 2012, the number of transactions involving acquisition of local residential properties by overseas companies was less than 500, accounting for no more than 1% of the total residential property transactions. The figures reveal that only a limited number of overseas companies are engaged in local residential property transactions. Given that effecting property transfers through transfers of shares of overseas companies involves certain risks such as uncertainties with respect to other assets and liabilities of the relevant overseas companies, we believe that the general public would not disregard such possible hidden risks and acquire residential properties through such means.

As announced by the Financial Secretary on October 26, 2012, the proposed adjustment to the duty rates and holding periods of the Special Stamp Duty (SSD) and the introduction of the Buyer's Stamp Duty (BSD) are targeted measures for the purpose of managing demand and further curbing speculation amidst the current tight supply and exuberant state of the residential property market, thereby facilitating the healthy and stable development of the property market in Hong Kong. Under the proposals, BSD is applicable to all buyers of residential properties who are not Hong Kong permanent residents (HKPRs), including foreigners, local and overseas companies. In other words, same as other buyers who are not HKPRs, overseas companies are required to pay BSD at 15 per cent on top of the existing ad valorem stamp duty if they acquire local residential properties on or after October 27, 2012. The adjusted SSD rates will also be applicable if the relevant residential properties are resold within three years. If the overseas companies have acquired local residential properties during the period from November 20, 2010 (ie the day following the Government's announcement on the introduction of SSD) to October 26, 2012 (both dates inclusive) and they resell the relevant properties within two years, they still have to pay SSD at the applicable pre-adjustment rate. We believe the relevant measures will increase substantially the cost for non-HKPRs (including overseas companies) to purchase local residential properties, thus reducing their desire to commit to any transactions. This will help prevent even further exuberance in the residential property market and ensure the healthy and stable development of the property market.

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