



香港地產建設商會

THE REAL ESTATE DEVELOPERS ASSOCIATION OF HONG KONG

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20 April 2011

The Honourable James To Kun-sun
Chairman
Bills Committee on
Stamp Duty (Amendment) (No.2) Bill
Legislative Council
8 Jackson Road
Central
Hong Kong

Dear Mr. To,

Stamp Duty (Amendment) (No.2) Bill ("the Bill")

We refer to the response of the Administration to REDA's submission as recorded in LegCo Paper CB1933/10-11(03) (copy of the relevant page attached), and would like to make the following comments:

Bare sites

The Administration is not proposing any exemption for bare sites.

REDA finds this difficult to understand, as there has been no suggestion of any speculation in relation to bare sites. Further, we cannot see why such an exemption would create loopholes as a "bare site" is capable of easy and clear definition.

Disposal of units in a new building upon redevelopment of an old building

REDA appreciates that circumstances vary in relation to the acquisition and disposal of units in an existing old building for redevelopment.

We would respectfully submit that in the following situation, SSD should not be imposed:

1. A bare site has, or units in an existing old building have, been acquired.
2. The old building is demolished and a new building is erected or being erected in place of the old building.



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3. The developer then disposes of units in the new building within a period of 24 months after the acquisition of the bare site or units in the old building.

In the above situation, what are being sold by the developer (units in the new building) is entirely different from what had been acquired (a bare site or units in an old building), although both involve interests in the same piece of land. REDA is unable to see any justification for imposing SSD on the developer, as no element of speculation is involved. Further, no loopholes will be created since the situation is capable of easy and clear definition.

Imposing SSD in this situation will have the effect of discouraging timely supply of new units to the market.

Distribution of unsold units to a party under a Development Agreement

As we have pointed out, this typically arises in the following situation:

1. The land is owned by a statutory corporation such as MTR Corporation Limited ("MTRC") or the Urban Renewal Authority ("URA").
2. The developer enters into a Development Agreement ("DA") with MTRC or URA whereby :-
 - (a) the developer, at its own costs, is to construct new units on the land owned by the statutory corporation;
 - (b) the statutory corporation sells the units and the parties share in the surplus sale proceeds;
 - (c) in the event that units remain unsold upon the expiration of a period of time (say 12 months) after the issue of the occupation permit, some or all the unsold units are to be distributed to the developer.

REDA's proposal is that where the unsold units are distributed to the developer, the developer should not be subject to any SSD if it re-sells the units within 24 months. The imposition of the SSD would have the effect of discouraging sale of the units by the developer after distribution, thus reducing the supply of new units.

Again, in the above scenario, no issue of speculation arises.

If the Administration is concerned about creating loopholes, the exemption can be confined to situations where the DA was entered into with a statutory corporation such as MTRC or URA.



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Intra-group transfers

We note that the Administration is proposing that transfers between associated companies be exempted from SSD.

For the purpose of determining whether SSD is payable on the subsequent disposal by the transferee, the date of acquisition of the property by the transferor should be deemed to be the date of acquisition by the transferee (so that the 24 months start to run from the date of acquisition by the transferor).

Yours sincerely

Louis Loong
Secretary General

c.c. Ms. Annette Lee, Deputy Secretary for Transport and Housing

<p><i>The Real Estate Developers Association of Hong Kong (REDA)(LC Paper No. CB(1)991/10-11(01)</i></p>	<p>(b) Introducing an adjudication mechanism for:</p> <ul style="list-style-type: none"> (i) the amount of stamp duty payable; and (ii) ascertaining whether SSD is payable in advance of a proposed transaction before an instrument is executed. <p>(a) SSD not to apply to –</p> <ul style="list-style-type: none"> (i) bare sites; (ii) disposal of units in an existing old building for redevelopment; or (iii) disposal of new units in a new development by a developer. <p>(b) For units acquired by a party pursuant to a joint development agreement, SSD will not apply in the subsequent disposal of the units by that party.</p> <p>(c) For intra-group transfer, SSD will not apply.</p>	<p>As we have repeatedly emphasized, we consider that it is very important that the law should be clear and without ambiguity, and that any exemptions to be considered should not affect the effectiveness of SSD, and have to be fair and measurable in an objective manner, and the types of exemptions should be clearly set out in the Bill. Too many exemptions will create loopholes.</p> <p>We have proposed in the Bill that transfer between associated companies be exempted from SSD.</p> <p>We have carefully considered the issues raised by REDA. We consider that such exemptions will create loopholes for speculation. We believe that as long as the law is clearly drafted, developers should be able to flexibly adjust their business strategies and operation without affecting the supply, in the light of the new taxation environment when the Bill comes into effect.</p>
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