



香港地產建設商會

THE REAL ESTATE DEVELOPERS ASSOCIATION OF HONG KONG

香港中環德輔道中十九號環球大廈1403室
Room 1403, World-Wide House, 19 Des Voeux Road Central, Hong Kong.
Tel: 2826 0111 Fax: 2845 2521

22 November 2012

By fax and mail

Mr. Duncan Pescod, JP
Permanent Secretary for Transport and Housing
Housing Authority Headquarters
33 Fat Kwong Street
Homantin
Kowloon.

Dear Duncan,

Buyer's Stamp Duty

Following our meeting with you and your colleagues on 6 November, we have consulted our members on the subject and would like to set out our views for your consideration.

We are gravely concerned over the recent measures introduced by the Government to manage the demand side of the property market, in particular the proposed Buyer's Stamp Duty ("BSD").

Whilst we appreciate Government's intention to assist Hong Kong people to secure their own homes, especially first-time home buyers and buyers in the mass residential market, we are deeply concerned about the potential consequences of the proposed BSD, in particular, the impact that the inclusion of companies may have on:

- Hong Kong's international reputation as an open economy operating on a level playing field
- normal legitimate business operations
- private investment portfolios, family arrangements and estate planning, etc.



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For example, normal business operations can include a whole range of important issues such as site assembly for redevelopment (already a fraught and difficult process) which would impact the new supply chain, acquisition of quarters for staff or trainees, fund management investments, etc.

The real causes of the present situation are two long term Government policies viz., the USD/HKD peg leading to extremely low interest rates and a shortage of land supply for many years. Given that the continuation of the peg is a fixed assumption, the solution is therefore to gradually increase land supply. This has started to take place although it will take some time for the full effects to be seen. Meanwhile, further interventionist measures such as Special Stamp Duty and the proposed BSD, effectively mean that every aspect of the real estate market is now under direct Government control – a situation which we consider is unhealthy and potentially dangerous.

In short, the question is whether the cost to Hong Kong's reputation and normal business operations is worth the price? We do not believe so.

Targeting company purchasers indiscriminately will only thwart international investors and damage our reputation as one of the freest economies in the world. At the press conference on 26 October, the Financial Secretary was hopeful that non-local buyers "*will understand that this is an extraordinary measure introduced under exceptional circumstances*". The reality is that such measures will inevitably cast a shadow in the minds of international investors on the attractiveness of Hong Kong as an investment destination of choice.

Whilst one may argue that the exclusion of companies may provide a loophole to certain buyers, we believe it is unlikely to have a significant impact on mass market transactions because:

- financing costs are more expensive than direct mortgages to individual purchasers, and
- companies are more costly and troublesome to maintain for individuals who are purchasing their own homes.



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We do not therefore consider that the exclusion of companies will be detrimental to the policy intentions of the proposed BSD.

However, if the Government is minded to impose BSD on company purchasers regardless, we would firstly recommend that exemptions be granted to Hong Kong companies whose directors/shareholders are Hong Kong Permanent Residents as confirmed by a self-declaration in their annual returns

Secondly, as the Financial Secretary stated in the same press conference that *“the price of small-and-medium sized flats has increased by 21 per cent in the first nine months of 2012, much faster than the 11 per cent of larger flats”*, the focus of any demand side management measures should logically be put on the mass market rather than the *“larger flats”*, say of HKD30million and above, which should therefore be exempted from the BSD.

The above two proposals will help minimize the disruption caused by the BSD under *“exceptional circumstances”* to legitimate property investments while buying time for the anticipated increase in housing supply to come through the pipeline.

Thirdly, as the Financial Secretary is committed to *“consider withdrawing this measure (i.e., BSD) when the market regains its balance”*, we would recommend that a *“sunset clause”* be introduced to the proposed legislation by which BSD automatically expires after a certain period and would only be renewed after due and careful consideration of the then prevailing circumstances.

Fourthly, we would strongly recommend that as a further measure to help first-time home buyers, Government should waive the ad valorem stamp duty for them and relax the loan-to-value ratio of their mortgages to 80% or even 90%.

At the meeting of 6 November, the Deputy Secretary for Financial Services and the Treasury has assured us that the policy intention of BSD is that normal business activities involved in redevelopment projects will not be affected. She added that some initial exemption criteria have already been proposed which are outlined in the Q&A provided on the Inland Revenue Department’s (“IRD”) website. We are pleased to note that the FST Bureau will explore whether any additional exemptions



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would be warranted for the subsidiary legislation to be introduced into the Legislative Council.

In this respect, we would like to provide a general picture of how our industry operates in redevelopment projects. Typically, developers acquire residential units of a land lot by using companies for the ultimate goal of redevelopment. Such units may be held by different companies but are actually owned by the same developer or consortium. Unification of titles is required to proceed with the project further when acquisition is at a mature stage. In the absence of further clarification by the Government, such normal and standard procedures will lead to possible exposure to the BSD payment. The extra BSD, on top of the standard stamp duty, will put another hurdle to urban renewal and cause unnecessary increase of land cost which will discourage both local and foreign investors from undertaking residential redevelopment and thereby have a detrimental effect on housing supply.

Whilst some exemption criteria have been proposed for development sites or buildings of redevelopment plans to encourage urban renewal, those criteria are so narrow to the extent that most of the buildings or sites will not be covered save the rare exceptions of some URA projects in the pipeline.

In the IRD's Q&A, the Government, when granting the exemption, will impose conditions such as number of units, construction and sale time limits:

“acquisition of residential properties (including bare sites) for the construction of a prescribed number of residential properties after demolishing the residential properties, if any, acquired and the properties are to be completed and put up for sales within a specified period of time after acquisition of the first residential property concerned (the BSD exempted will be recouped if the conditions are not fulfilled)”¹

Such conditions are impractical because:

¹ Inland Revenue Department's website, FAQ on Buyer's Stamp Duty, Question 6 (ix)



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- Each site is different and covered by different statutory/lease requirements. It is inappropriate to impose a standard time limit to all projects. The period of disposal of completed flats should be realistically set to reflect the lengthy amalgamation process. Some of the redevelopments may take considerable time to complete the procedures of planning approval, lease modification or land exchange, or they could be difficult sites involving complex foundation works. It is simply impractical to impose a time limit for any redevelopment projects as most of them will take more than 10 years to accomplish.
- For sites purchased under Compulsory Sale Orders, the Court will impose appropriate building covenants in light of specific site situations. There is no need to impose another set of similar restrictions without due consideration of specific site conditions.
- The prescribed number of flats in a development should also be determined by the market. Besides, a prescribed number of residential properties suggests the reference to a set of approved building plans. However, the Buildings Department has recently imposed a pre-requisite of 100% ownership prior to the review of any building plan submission. It is therefore impossible to know the prescribed number of residential properties until all interests in a redevelopment site have been acquired.

To minimize the disruption of the BSD to bona fide redevelopment activities, the following arrangement should be put in place:

- i) Direct BSD exemption should be granted to a company and its associate(s) or joint venture partner(s) in the following circumstances:
 - Purchase of residential properties of no less than 40 years;
 - Purchase of bare sites; and
 - Such company owning the interest of a residential site/property at no less than 80%.²

² The definition of site and the assessment of interest to follow the established practices under the Land (Compulsory Sale for Redevelopment) Ordinance (Chapter 545).



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- ii) Refund of BSD should be granted upon application by a company and its associate(s) or joint venture partner(s) which collectively own no less than 20% interest of the site within the last 5 years from the date of application.

As you may have realized by now, it is not easy to cover all the different scenarios of the operation of our industry in one letter. We would propose that a task force comprising representatives from your Bureau, the Financial Services and Treasury Bureau, and our Association be set up to work out the technical details of the above proposed exemptions. We look forward to hearing your favourable response.

Lastly, we would respectfully advise against taking any measures for the sake of short-term expediency at the cost of risking Hong Kong's hard-earned reputation as one of the freest and most productive economies in the world.

Yours sincerely

Stewart Leung
Chairman, Executive Committee

c.c. Deputy Secretary for Financial Services and the Treasury