

# Tax Analysis

Authors:

Hong Kong Tax

## Hong Kong

### Raymond Tang

Partner

Tel: +852 2852 6661

Email: raytang@deloitte.com.hk

### Alfred Chan

Director

Tel: +852 2852 6531

Email: alfchan@deloitte.com.hk

### Yanick Leung

Senior Manager

Tel: +852 2852 6453

Email: yleung@deloitte.com.hk

## Special Stamp Duty to be extended and Buyer's Stamp Duty to be introduced to cool down overheated property market

### Introduction

Hong Kong Financial Secretary, John Tsang announced on 26 Oct 2012 that the Government would introduce another round of measures to address the overheated property market, after the Special Stamp Duty ("SSD") was firstly introduced in November 2010. The SSD duty rates would be adjusted upwards and the coverage period of SSD charge would also be extended. Moreover, on top of the existing ad valorem stamp duty and the SSD, a Buyer's Stamp Duty ("BSD") would also be introduced and would be payable by residential properties buyers (including individuals and companies) other than individual Hong Kong permanent residents.

Despite the launch of SSD in 2010, the price and transaction volume of residential properties have recently reached a new record high, indicating that the original SSD has been insufficient to curb speculative activities in residential property market. In addition to the launch of the third round of quantitative easing (QE3) by the U.S. Federal Reserve for which the low interest environment is expected to be maintained for a considerable period of time, further capital inflow into Hong Kong and short-term speculations of local property market is expected to continue.

The launch of the extended SSD and new BSD shows the Government has been monitoring the development of the residential property market and would take required measures to safeguard the healthy and stable development of the Hong Kong property market.

### 1<sup>st</sup> measure: "Extended" Special Stamp Duty

Under the original SSD regime, a regressive rates from 5%-15% are applied on the disposal (sale and transfer) of residential properties which were acquired on or after 20 November 2010 and resold within 24 months after the date of acquisition. (Please refer to Tax Analysis on 25 November 2010 – issue #H37/2010 "Special Stamp Duty to be introduced to curb speculation in residential property" for more details of the original SSD regime.)

The Government now announces that it will amend the Stamp Duty Ordinance ("SDO") to adjust the SSD duty rates upwards (10% - 20%) and extend the coverage period to 36 months as follows:

- 20% if the sale and transfer of the property held for six months or less;
- 15% if the sale and transfer of the property held for more than six months but for 12 months or less; and
- 10% if the sale and transfer of the property held for more than 12 months but for 36 months or less.

Subject to the enactment of the amendments to SDO, the extended SSD regime will be applicable to all residential properties acquired on or after 27 October 2012. On the other hand, residential properties acquired between 20 November 2010 and 26 October 2012 are subject to the original SSD regime.

## **2<sup>nd</sup> measure: Buyer's Stamp Duty**

### *The charge of BSD on acquisition of residential properties in Hong Kong*

The new BSD will be applicable to all Hong Kong residential properties acquired by any person (including individuals and companies), on or after 27 October 2012, except a Hong Kong permanent resident (HKPR). The BSD will be charged at 15% on the stated consideration or the market value of the property, whichever is higher. The buyer or transferee will be liable to pay the BSD, on top of the existing ad valorem stamp duty on property transaction and the SSD, if applicable.

### *Date of sale and purchase*

Similar to SSD, the date the seller and buyer enter into a legally binding agreement for sale and purchase will be regarded as the date of sale and purchase for purposes of the BSD. Both provisional agreement for sale and purchase and formal agreement for sale and purchase are chargeable agreements and person who enters into either of the agreements will be regarded as having "acquired" the property.

### *Exemptions<sup>1</sup>*

Exemptions to the BSD are proposed to apply in the following cases:

- i. Acquisition of a residential property by a HKPR jointly with a close relative<sup>2</sup> or close relatives who is/are not HKPR;
- ii. Transfer of a residential property to a close relative(s) who is/are not HKPR;
- iii. Nomination of a close relative(s) who is/are not HKPR to take up the assignment of a residential property under a sale and purchase agreement;
- iv. Acquisition or transfer of a residential property by or to a purchaser or transferee under a court order;
- v. Acquisition or transfer of a mortgaged residential property by or to a mortgagee which is a financial institution;
- vi. Acquisition or transfer of a residential property from a deceased person's estate;
- vii. Acquisition or transfer of a residential property between associated body corporate (satisfying for group relief under Section 45 of SDO);
- viii. Acquisition of residential properties for demolishing and reconstruction purpose and the reconstructed properties acquired are to be completed and put up for sales within a stipulated period of time after the acquisition of the first residential properties;
- ix. Acquisition of properties which are sold pursuant to redevelopment projects pursued by the Urban Renewal Authority or are resumed under the Lands Resumption Ordinance;
- x. Acquisition of properties by the Government; and
- xi. Gift of properties to charitable institutions under the Inland Revenue Ordinance.

### *Date of payment of BSD*

Liability to pay the BSD will arise once the new law comes into effect. For chargeable sale and purchase agreements executed between 27 October 2012 and the date on which the new law enters into force, any applicable BSD must be paid within 30 days from the effective date of the law. For chargeable agreements executed on and after the date the new law enters into force, the BSD must be paid within 30 days of the signing of the sale and purchase agreements. If there is no sale and purchase agreement, the BSD will be payable within 30 days of the date of assignment.

---

<sup>1</sup> Please refer to "FAQ: Buyer's Stamp Duty" on the Inland Revenue Department's website: <<http://www.ird.gov.hk/eng/faq/bsd.htm>>

<sup>2</sup> For the purpose of the BSD, the term "close relative" means a parent, spouse, child, brother or sister.

## Comments

Despite the first launch of SSD in November 2010 which aimed to stabilize the property market, the effect has been offset by the external economic factors. Low interest environment and continuous inflow of capital has surged the property price to a new record high. The introduction of the extended SSD and the new BSD may help to halt excessive speculative activities on the property market and stabilize the property price.

While we support the government's measures to curb property speculations, we have the following comments on the introduction of the two new measures:

### *Liability to pay BSD*

According to the frequently asked questions released by the Government, in case a residential property is jointly acquired by a HKPR and a non HKPR who is not the close relative of the HKPR, the exemption from BSD will not apply and the full BSD will be payable on the stated consideration or full value of the property (whichever is higher). As the buyer or the transferee would be liable for paying the BSD, it is unclear if both the HKPR and the non HKPR buyers would be jointly liable to the BSD, or only the non HKPR is liable for the whole amount of BSD.

### *Section 45 Stamp Duty exemption*

In responding to the press enquiries on BSD, the Government expressed its intention that the current intra-group relief under Section 45 of the Stamp Duty Ordinance will extend to cover the extended SSD and the new BSD. Where the exemption conditions are not satisfied (e.g. subsequent to the transfer of property by a parent company to its subsidiary, the shares of the subsidiary are sold to a non-associated company or person within two years after the property transfer), there will be no exemption from BSD and the parent company should pay the BSD for the property transfer in 30 days after the transfer of the shares. However, this contradicts with the spirit that it is the transferee that should bear the BSD and therefore it is yet to be clarified whether the transferor (i.e. the parent company) or the transferee (i.e. the subsidiary) should be liable for the BSD under this circumstance.

### *BSD liability of companies acquiring residential properties*

It has been a loophole that the original SSD and the extended SSD will only be imposed on the transfer of residential property but not the transfer of shares as we have commented in our previous Tax Analysis on 25 November 2010. With the launch of BSD, persons (including both Hong Kong company and overseas company) acquiring residential properties will be liable to the new 15% BSD. This may prevent speculators from setting up a company to acquire residential properties and may help removing the loophole to make use of holding company to elude ad valorem stamp duty and SSD on residential property transactions.

However, from the perspective of a company, it is liable to BSD for acquisition of residential properties of all nature. This may have unintended effect of negatively impacting genuine users of properties. For example, a company may be refrained from acquiring residential properties serving as staff quarters to avoid soaring rental costs. The government may consider introducing a mechanism to grant exemptions to Hong Kong companies who are genuine users, but not speculators.

### *Non HKPR using a trust with a HKPR trustee to acquire residential properties*

Since BSD will not be applicable to HKPR, it is possible that foreign speculators may seek ways to escape from the imposition of BSD, such as making use of a trust arrangement by appointing a HKPR as the trustee to acquire Hong Kong residential properties. The rules on BSD are new. It is not entirely clear whether BSD may be avoided by using trust arrangements. It is possible that the Government may issue clarification in this regard.

## Concluding remarks

With the residential property price hitting a new record high recently, it has become a severe housing problem to many Hong Kong citizens. Moreover, excessive speculative activities will also prevent the healthy development of the Hong Kong property market. Therefore, we welcome the government to monitor the property market closely and impose required measures to safeguard the proper operation of the market. Similar measure has been used by the Singapore Government in 2011 where additional Buyer's Stamp Duty (3% or 10% on top of the existing Buyer's Stamp Duty) is imposed to combat excessive speculations on the Singapore's property market. Since the launch of the measure, although the Singapore property price has still gone up, the original surge in price has been improved.

Back in Hong Kong, the introduction of the extended SSD and the new BSD may be helpful to suppress the demand of Hong Kong residential properties. However, to effectively address the excessive speculating markets and to solve the

housing problem of Hong Kong citizens, the Government should also formulate policies to increase the supply of residential properties in medium to long term.

**Beijing****Kevin Ng**

Partner

Tel: +86 10 8520 7501

Fax: +86 10 8518 7501

Email: keving@deloitte.com.cn

**Chongqing****Claude Gong**

Partner

Tel: +86 23 6310 6206

Fax: +86 23 6310 6170

Email: clgong@deloitte.com.cn

**Dalian****Frank Tang**

Partner

Tel: +86 411 8371 2888

Fax: +86 411 8360 3297

Email: ftang@deloitte.com.cn

**Guangzhou****Constant Tse**

Partner

Tel: +86 20 8396 9228

Fax: +86 20 3888 0121

Email: contse@deloitte.com.cn

**Hangzhou****Qiang Lu**

Partner

Tel: +86 571 2811 1901

Fax: +86 571 2811 1904

Email: qilu@deloitte.com.cn

**Hong Kong SAR****Sarah Chin**

Partner

Tel: +852 2852 6440

Fax: +852 2520 6205

Email: sachin@deloitte.com.hk

**Jinan****Eunice Kuo**

Partner

Tel: +86 531 8518 1058

Fax: +86 531 8518 1068

Email: eunicekuo@deloitte.com.cn

**Macau SAR****Quin Va**

Partner

Tel: +853 8898 8833

Fax: +853 2871 3033

Email: quiva@deloitte.com.hk

**Nanjing****Frank Xu**

Partner

Tel: +86 25 5791 5208

Fax: +86 25 8691 8776

Email: frakxu@deloitte.com.cn

**Shanghai****Eunice Kuo**

Partner

Tel: +86 21 6141 1308

Fax: +86 21 6335 0003

Email: eunicekuo@deloitte.com.cn

**Shenzhen****Constant Tse**

Partner

Tel: +86 755 3353 8777

Fax: +86 755 8246 3222

Email: contse@deloitte.com.cn

**Suzhou****Frank Xu / Maria Liang**

Partner

Tel: +86 512 6289 1318 / 1328

Fax: +86 512 6762 3338

Email: frakxu@deloitte.com.cn

mliang@deloitte.com.cn

**Tianjin****Jason Wu**

Partner

Tel: +86 22 2320 6680

Fax: +86 22 2320 6699

Email: jassu@deloitte.com.cn

**Wuhan****Justin Zhu**

Partner

Tel: +86 27 8526 6618

Fax: +86 27 8526 7032

Email: juszhu@deloitte.com.cn

**Xiamen****Lynch Jiang**

Partner

Tel: +86 592 2107 298

Fax: +86 592 2107 259

Email: lijiang@deloitte.com.cn

**About the Deloitte China National Tax Technical Centre**

The Deloitte China National Tax Technical Centre ("NTC") was established in 2006 to continuously improve the quality of Deloitte China's tax services, to better serve the clients, and to help Deloitte China's tax team excel. The Deloitte China NTC prepares and publishes "Tax Analysis", "Tax News", etc. These publications include introduction and commentaries on newly issued tax legislations, regulations and circulars from technical perspectives. The Deloitte China NTC also conducts research studies and analysis and provides professional opinions on ambiguous and complex issues. For more information, please contact:

**National Tax Technical Centre**

E-mail: ntc@deloitte.com.cn

**Eastern Region****Leonard Khaw**

National Leader &amp; Partner

Tel: +86 21 6141 1498

Fax: +86 21 6335 0003

Email: lkhaw@deloitte.com.cn

**Northern Region****Angela Zhang**

Partner

Tel: +86 10 8520 7526

Fax: +86 10 8518 1326

Email: angelazhang@deloitte.com.cn

**Southern Region****Davy Yun**

Partner

Tel: +852 2852 6538

Fax: +852 2520 6205

Email: dyun@deloitte.com.hk

If you prefer to receive future issues by soft copy or update us with your new correspondence details, please notify Wandy Luk by either email at [wanluk@deloitte.com.hk](mailto:wanluk@deloitte.com.hk) or by fax to +852 2541 1911.

#### About Deloitte

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee, and its network of member firms, each of which is a legally separate and independent entity. Please see [www.deloitte.com/cn/en/about](http://www.deloitte.com/cn/en/about) for a detailed description of the legal structure of Deloitte Touche Tohmatsu Limited and its member firms.

Deloitte provides audit, tax, consulting, and financial advisory services to public and private clients spanning multiple industries. With a globally connected network of member firms in more than 150 countries, Deloitte brings world-class capabilities and high-quality service to clients, delivering the insights they need to address their most complex business challenges. More than 195,000 Deloitte professionals are committed to becoming the standard of excellence.

#### About Deloitte in Greater China

We are one of the leading professional services providers with 21 offices in Beijing, Hong Kong, Shanghai, Taipei, Chongqing, Dalian, Guangzhou, Hangzhou, Harbin, Hsinchu, Jinan, Kaohsiung, Macau, Nanjing, Shenzhen, Suzhou, Taichung, Tainan, Tianjin, Wuhan and Xiamen in Greater China. We have nearly 13,500 people working on a collaborative basis to serve clients, subject to local applicable laws.

#### About Deloitte China

In the Chinese Mainland, Hong Kong and Macau, services are provided by Deloitte Touche Tohmatsu, its affiliates, including Deloitte Touche Tohmatsu CPA Limited, and their respective subsidiaries and affiliates. Deloitte Touche Tohmatsu is a member firm of Deloitte Touche Tohmatsu Limited (DTTL).

As early as 1917, we opened an office in Shanghai. Backed by our global network, we deliver a full range of audit, tax, consulting and financial advisory services to national, multinational and growth enterprise clients in China.

We have considerable experience in China and have been a significant contributor to the development of China's accounting standards, taxation system and local professional accountants. We provide services to around one-third of all companies listed on the Stock Exchange of Hong Kong.

This publication contains general information only, and none of Deloitte Touche Tohmatsu Limited, its member firms, or their related entities (collectively the "Deloitte Network") is by means of this publication, rendering professional advice or services. Before making any decision or taking any action that may affect your finances or your business, you should consult a qualified professional adviser. No entity in the Deloitte Network shall be responsible for any loss whatsoever sustained by any person who relies on this publication.