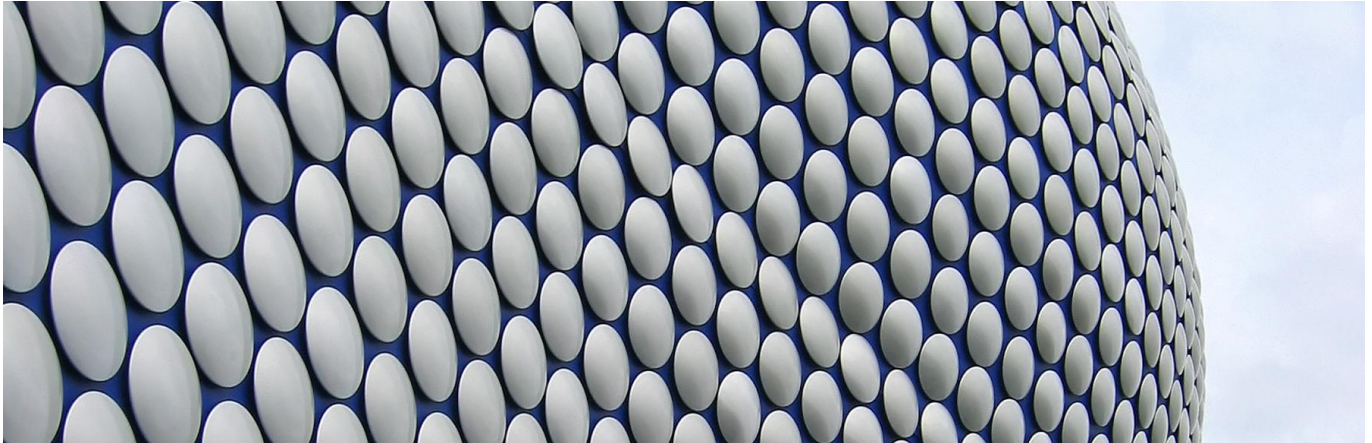


NEW COOLING MEASURES ON THE OVERHEATED RESIDENTIAL PROPERTY MARKET

Hong Kong tax news - November 2012



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INTRODUCTION

Despite various measures adopted by the Government to counteract speculation, the Hong Kong residential property prices continued to rise. The overall flat prices have increased by 20% during the first 9 months of 2012 and by 107% since 2008. In order to cool down the overheated property market, on 26 October 2012, the Financial Secretary announced that the Government will amend the Stamp Duty Ordinance to introduce two additional measures to suppress the property speculative activities in Hong Kong:

- Introduction of a Buyer's Stamp Duty ("BSD") at 15% on residential properties acquired by non-Hong Kong permanent residents; and
- Extension of the holding period for residential property for the Special Stamp Duty ("SSD") purposes to 3 years and increase of the SSD rates.

Amendments to Stamp Duty Ordinance will be required to effect the aforesaid changes. It is anticipated that it will take at least several months for the enactment of the legislation amendments. **The new legislations, when enacted, will take retrospective effect back to 27 October 2012.**

BSD ON RESIDENTIAL PROPERTIES PURCHASES BY NON-HONG KONG RESIDENTS

According to the Financial Secretary, BSD is an extraordinary measure introduced under exceptional circumstances and is to be charged at 15% on the stated consideration or the market value (whichever is higher) of all residential properties in Hong Kong acquired by **non-Hong Kong permanent residents** (“HKPR”) on or after 27 October 2012. In other words, **any Hong Kong residential property acquired on or after 27 October 2012 by a foreigner (including a Mainland citizen) or a company, whether incorporated in Hong Kong or overseas, will be subject to BSD.**

Buyer or transferee of residential properties is liable to pay the BSD within 30 days after the execution of the chargeable document or 30 days after the date of gazettal of the amended Stamp Duty Ordinance, whichever is later.

Buyer can apply for BSD refund within 2 years after the cancellation of the chargeable agreement.

Exemption from BSD

The Government proposed to grant BSD exemption under certain circumstances including the followings:

- (i) Acquisition or transfer by or to a HKPR (or a HKPR jointly with a non-HKPR close relative)
- (ii) Acquisition or transfer by inheritance, winding up, bankruptcy, court order (including compulsory sale)
- (iii) Acquisition or transfer between associated companies
- (iv) Acquisition of residential properties for redevelopment (how this will work has not yet been clearly stated)

Extension of the covering period for SSD

The Government proposed to increase the SSD rate which was introduced in November 2010 and extend its covering period. Under the new regime, any residential property acquired on or after 27 October 2012 and resold within 36 months will be subject to the new rates of SSD as follows:

| SSD on residential property | | |
|-----------------------------|---|--|
| Holding period (month) | Rate for | |
| | Residential property acquired on or after 27 October 2012 | Residential property acquired between 20 November 2010 and 26 October 2012 (inclusive) |
| 0 – 6 | 20% | 15% |
| 6 – 12 | 15% | 10% |
| 12 - 24 | 10% | 5% |
| 24 - 36 | 10% | - |

The seller and the buyer are jointly and severally liable for paying the SSD. A chargeable agreement for sale or a conveyance on sale is to be stamped with SSD at the same time as that for the existing stamp duty, i.e. within 30 days from the date of execution.

The person who has paid the SSD can apply for refund within 2 years after the cancellation of the agreement for sale.

Exemption from SSD

Circumstances under which exemptions to SSD will be granted remain the same as the original SSD regime.

The content of this newsletter is only for general guidance on matters of interest and is not meant to be comprehensive. The application and impact of laws can vary widely based on the specific facts involved.

Readers are advised to consult their tax advisors before making any business decisions.

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