

Prepared remarks of David M Webb, Founder of Webb-site.com
Regarding "Special Stamp Duty"
to the Legislative Council Bills Committee on Stamp Duty (Amendment) (No. 2) Bill 2010
4th January 2011, 4.30pm

Honourable Members,

I should first declare that I have no personal interest in SSD. I have only ever bought one property in HK, which I live in. I did not want to pay multiple rounds of stamp duty as my requirements expanded from those of a singleton to a married person with children. Normal Stamp Duty is approximately one year's rent. So I rented seven different homes before buying one.

On 7th June last year, the Government responded to LegCo on whether a higher rate of stamp duty could be imposed on short-term sales. The Secretary for Transport and Housing said:

QUOTE: "The proposal is unfair to those who have genuine needs to sell their properties... and will cause additional hardship to those in financial difficulties. In fact, not all property transactions generate profits. Those gaining profits from property speculation are already subject to profits tax. The additional stamp duty will be considered as a kind of double taxation." UNQUOTE

I agree entirely. Nothing in the fundamentals of law and economics has changed since then, and the Government has failed to explain why its own concerns have now been dismissed in favour of this draconian measure.

The economic reality of SSD is that the buyer will not compensate the seller for his personal circumstances, when the buyer could buy an identical flat which does not bear SSD. So the SSD will be suffered by the seller in his net price.

The SSD is not just unfair. It is also against the Basic Law. Article 105 promises the right to acquire and dispose of property, including real estate. Implicitly, that right must be exercisable without penalty.

Since the seller absorbs the SSD in his net price, this amounts to a penalty for exercising his Basic Law right. The SSD bears no relation to the profit or loss made on the transaction. Indeed, the stated purpose for SSD is to punish people who buy and sell within 2 years, to deter them from doing so. That is, to punish them for exercising a right under the Basic Law.

Imagine if other rights in the Basic Law were subject to penalties. For example, we could levy a duty on people who exercise their right of free speech and assembly if they have lived here for less than 2 years – a \$1500 fixed penalty for premature marching. Or we could penalise people who frequently enter and leave the SAR with a higher rate of departure tax than those who have remained here for at least 6 months, despite the freedom of movement promised by the Basic Law. I am sure that Members will agree that such penalties would be unconstitutional. SSD is no different.

Home-buyers cannot predict all their future circumstances, such as the death of a working spouse, or loss of employment. Forcing a homeowner to choose between personal bankruptcy, in which they lose everything, and paying SSD, in which they might also wipe out their equity, is no choice at all.

Finally, the principle behind SSD appears to be that speculation is evil, and that people should be delivered from this evil by means of a deterrent. This is interventionism at its worst. Hong Kong was built on the foundations of risk-taking, free-market commerce. We have a system for taxing profits, whatever the commercial, speculative or entrepreneurial activity. We should not introduce distortive measures which discourage one class of speculation over any other, and certainly not a measure that has so many unintended victims.

The inconvenient truth is that resales within 2 years accounted for less than 20% of all transactions last year. Speculators have not cornered the market. Do not confuse cause and effect – bubbles attract speculators, but speculators don't cause bubbles. Those who wish to put their capital at risk and provide liquidity to the housing market should not be penalised for doing so.

Although we are here to talk about SSD, I should record my support for the HKMA's move to reduce loan-to-value ratios and stress-test borrowers, so that those who are borrowing to buy at current prices do not threaten the stability of the banking system. Nobody wants a tax-payer funded bailout. For the same reason, the Hong Kong Mortgage Corporation should either be completely privatised, without implicit government backing, or shut down. Taxpayers should not be taking the risk of having to bail out mortgage guarantees in the way that US taxpayers had to bail out Fannie Mae and Freddie Mac.

Thank you for your attention. I would be pleased to answer any questions you may have.

EXAMPLE

If the normal transaction price is \$10m plus regular stamp duty at 3.75%, then a seller within 6 months will have to cut his price to \$8.737m so that the 18.75% total stamp duty results in the same total of \$10.375m.

Alternatively, if the applicable rate of SSD is uncertain, then the seller will have to agree to be liable for the SSD on \$10m, potentially further reducing his proceeds to \$8.5m.