



Hong Kong Tax Newsflash: Vacant property rates bill introduced

As one of the measures initiated by the Chief Executive of the Hong Kong SAR on 29 June 2018 to encourage a timely supply of "first-hand" private residential units, an amendment bill to the existing Rating Ordinance was gazetted on 13 September 2019 (the "Bill"). Under the Bill, if a private residential unit remains unsold/not rented for 12 months after an occupation permit ("OP") is issued, the first-hand owner (typically the developer) (hereafter, the "first owner") would be subject to "vacancy property rates". Vacancy property rates would be collected in the form of "Special Rates" based on 200% of the rateable value (i.e. the estimated annual rental value) of the concerned unit.

This article describes the salient features of the proposed rules.

Liability to Special Rates

The owner of a first-hand private residential unit (i.e. that has never been assigned) would be subject to the Special Rates if, at the end of a 12-month reporting period (see "Reporting obligation" below), the residential unit is still held by the first owner, unless one of the following circumstances that give rise to an exemption from the Special Rates applies:

- The premises are leased to a person (other than a related party) for an amount that is not less than the market rent for at least 183 days in the aggregate during the reporting period. [NB1]
- The premises are provided by an employer to an employee as place of residence for at least 183 days in the aggregate during the reporting period. [NB2]

- The premises are sold to a person (other than a related party) under a sale and purchase agreement that is in force on the last day of the reporting period. [NB3]
- The premises are specifically excluded from the scope of charge under the Bill (see "Excluded Premises" below).

[NB1] Premises would be deemed to be "leased" only if a relevant tenancy agreement is stamped.

[NB2] Premises would be deemed to be provided to an employee as a place of residence only if that is indicated or to be indicated in the Employer's Return filed by the first owner.

[NB3] A sale and purchase agreement would be considered to be "in force" if no "negative events" have occurred, i.e. the agreement is not cancelled, annulled, rescinded and there have not been any events giving rise to non-performance of the agreement.

Persons liable

For the purpose of the proposed rules, the first owner would be the person whose name appears as the owner in the Land Registry records as at the date of issuance of the OP.

If the residential unit is assigned to a related party, directly or through a series of assignments, on or after 29 June 2018 (i.e. the date the Special Rates initiative was announced by the Chief Executive), the assignee would be deemed to be the first owner. A related party includes an associated company of a body corporate, an immediate family member of an individual and a body corporate controlled by an individual or an immediate family member. The related party measures aim to prevent the relevant person from mitigating/avoiding the Special Rates by assigning the residential units to related parties regardless of whether the premises remain vacant or not.

Affected residential units

Residential units that fall within the scope of the new rules include units in buildings or structures permitted for domestic use under the OP. In other words, the actual use of a building that otherwise is specified under other legal documents would not be relevant.

Nevertheless, certain premises would be excluded from the scope of charge (i.e. "Excluded Premises"), such as:

- Hotels or guesthouses as defined under the Hotel and Guesthouse Accommodation Ordinance;
 - Buildings used exclusively for specific healthcare, educational or cultural purposes (e.g. bed-space apartments, hospitals, residential care homes, drug treatment centers, housing provided by social
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services organizations, schools, religious premises, etc.);

- Premises held by the Urban Renewal Authority for rehousing individuals affected by redevelopment projects;
- Subsidized housing units certified by the Secretary for Transport and Housing; and
- Premises held by the government or an incorporated public officer.

Reporting obligation

The first owner of residential units with an OP issued for 12 months or more would be required to furnish annual returns to the Rating and Valuation Department on the occupancy status of the units, and to specify whether any of the circumstances for exemption as described above apply.

The first reporting period would be the 12-month period ending on the date the Bill becomes effective if the OP was issued more than 12 months before that date. Otherwise, the first reporting period would be the 12-month period commencing from the OP issuance date. The following table illustrates the reporting period, for examples:

OP date	Assumed effective date of Bill	First reporting period
1 November 2018	31 December 2019	1 January 2019 to 31 December 2019
1 February 2019	31 December 2019	1 February 2019 to 31 January 2020

The annual return should be filed within 28 days after the end of a reporting period. Recurring annual reporting would be required if the first owner continues to hold the residential units.

Calculation of Special Rates

The Special Rates are calculated at 200% of the rateable value of the residential units for the relevant 12-month reporting period. The rules for determining the rateable value are generally in accordance with the rules stated in the existing Rating Ordinance. The designated valuation reference date should be the first day of each reporting period.

Special Rates are collected annually. If the first owner continues to leave the residential unit vacant, Special Rates would continue to be imposed for the subsequent reporting periods.

Appeal and penalties

If the first owner does not agree to the assessment issued by the Rating and Valuation Department, it can file an objection within 28 days of having been served the demand notes.

Pending outcome of the objection, the Special Rates (together with surcharges, if any) still would have to be settled by the specified payment due date. Further appeal may be made to the Lands Tribunal (and subsequently to the Court of Appeal).

A 10% surcharge would be imposed if the Special Rates are not settled in a timely manner. Failure to comply with the reporting obligations or if false or misleading information is provided to the Commissioner of the Rating and Valuation Department may result in fines and/or imprisonment.

The Commissioner of Rating and Valuation would have authority to impose an "additional penalty" for any offence, at up to three times the Special Rates undercharged. The Commissioner also would have discretion to allow the first owner to pay a specific amount in lieu of prosecution in less severe cases.

Comments

The Bill would be introduced to the Legislative Council in the upcoming 2019-20 legislative session. Once enacted, it would come into operation three months following publication in the gazette.

The first reporting deadline for the first owner could be as early as 28 days after the date the Bill becomes effective (if the OP was issued earlier than 12 months before the Bill becomes effective). Affected persons—primarily property developers—should monitor the progress of the Bill and ensure they comply with the requirements in order to qualify for an exemption.

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