HONG KONG TAX ALERT

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Hong Kong halves stamp duty on commercial property

Summary

On 25 November 2020, the government announced that the double rate of stamp duty would be abolished on commercial property. In recent years stamp duty on commercial property has been levied at rates of up to 8.5%. This has been one reason why large scale real estate transactions have typically been structured as corporate sales rather than direct asset sales. The amended rules may reduce the tax leakage on forced sales of real estate and allow owners of real estate greater flexibility in their exit strategies as well facilitating restructurings although where possible sales of companies owning property are likely to remain more tax efficient.

Overview

In her policy address on 25 November 2020, Carrie Lam, the Chief Executive of Hong Kong SAR, announced that ad valorem stamp duty on commercial properties would be returned to the standard rates, effectively halving the tax payable. The changes do not affect residential property.

Stamp duty on commercial properties was increased in 2013 as part of a raft of measures intended to tackle rampant real estate inflation. The current market situation is different, with many businesses struggling as a result of COVID-19 and social unrest. Certain real estate sectors such as retail are also facing longer term trends such as increased digitalization. The measures are expected to benefit businesses needing to liquidate real estate assets as a result of declining revenues. The measures will take effect from 26 November.

The potential impact on taxpayers

While stamp duty is normally borne by the purchaser of real estate, the cost of the tax can be a factor in agreeing a purchase price. In practice, most large real estate transactions get around this problem by selling the property in a corporate wrapper, which is subject to much lower rates of stamp duty.

The reduction in stamp duty on commercial real estate potentially provides more flexibility on sales options, although corporate sales will generally remain more efficient. The principle effect of the change is likely to be in reducing the tax leakage where a corporate transaction is not an option.

Although group relief is available for transactions within the same 90% ownership group, the rules are complex and have a number of anomalies. The high cost of stamp duty has made some taxpayers cautious about restructuring real estate holdings within a corporate group. This relaxation potentially opens up the chance to look at this again.

KPMG Observations

Hong Kong’s stamp duties on real estate have been extraordinarily high by international standards and, as intended, this has reduced liquidity especially in the secondary market. The changes in respect of commercial stamp duty are therefore to be welcomed.

While the economic forces at play in the residential market are not the same as those in the commercial sector, we note that much of the rationale concerning the impact of high stamp duty rates in an economy hit by falling prices and forced sales as a result of economic hardship could apply equally to both sectors. We hope the government will also give some consideration to whether the full suite of measures on residential property (in particular the seller’s stamp duty which was designed to target speculation but also impacts forced sales at a loss and out of necessity) remain appropriate in the current market.

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