

# Hong Kong Tax Alert

18 September 2019  
2019 Issue No. 14

## Proposed introduction of “Special Rates” on vacant first-hand private residential units - charged annually at 200% of the rateable value of a unit

On 13 September 2019, the Rating (Amendment) Bill 2019 (the Bill) was gazetted to implement the proposed “Special Rates” announced by the Chief Executive in June 2018 to encourage a more timely supply of first-hand private residential units<sup>1</sup>.

The target units under the “Special Rates” regime are first-hand private residential units with occupation permit (OP) issued for 12 months or more. In other words, “Special Rates” is not applicable to non-residential units or second-hand residential units.

Developers, or first-owners of such units, are required to submit annual returns to the Rating and Valuation Department (RVD) on the status of the units during the past 12 months.

The first-owner of a target unit is liable for the payment of Special Rates chargeable annually at a flat rate of 200% of the rateable value of the target unit unless the target unit:

- I. has been sold; or
- II. has been rented out to a person (other than a related party of the first-owner) under a stamped tenancy agreement at market rent or above and for not less than 183 days in aggregate during the reporting period; or
- III. has been provided by the first-owner as an employer to an employee of the first-owner as a place of residence for not less than 183 days in aggregate during the reporting period.

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1. <https://www.gld.gov.hk/egazette/pdf/20192337/es32019233714.pdf>

A target unit will be deemed as sold and hence not subject to the "Special Rates" if an agreement for sale and purchase (ASP) has been signed in respect of the unit, notwithstanding that the assignment of the unit has yet to be executed.

First-owners are however obliged to notify the RVD in the event of subsequent cancellation or termination of an ASP within 28 days immediately after the date of the cancellation or termination. Such cancellation or termination could result in back payment of "Special Rates".

The "first-owner" of a target unit refers to the person who holds the target unit on the date its OP is issued. To guard against avoidance of the "Special Rates" by a first-owner through sale of the target units to their associated companies, the Bill proposes to specify that a person deriving title of a target unit (i.e., the successor) directly or indirectly from the original first-owner becomes a first-owner of the target unit if the successor is a related party of the original first-owner (except for an assignment made before 29 June 2018).

### **Submission of Returns**

First-owners are required to submit annual returns to the RVD in respect of the target units. If a first-owner has ever held the target units during the past 12 months, it is required to declare the status of the units concerned, including:

- a. whether any ASP or assignment has been made in respect of the unit;
- b. if an ASP or assignment has been made, whether the parties to the transaction are associated companies; and
- c. whether the unit has been rented out for more than 183 days at or above market rent in the past 12 months.

The earliest first return will be in respect of the 12-month period before the date when the Bill becomes law and comes into operation.

The RVD may, where necessary, require the developers to provide relevant information and documents, such as stamped tenancy agreements, ASPs, assignments, etc., for verification of the details in the returns.

A person who, without reasonable excuse, fails to submit a return or finish information to the RVD within a specified period, or fails to notify the termination or cancellation of an ASP within a specified period, shall be liable to certain penalties and fines.

### **Exempt units**

While some units can be used for domestic purposes, their nature is different from private residential units. The Bill therefore proposes to exempt from the "Special Rates" regime units permitted for domestic use in certain types of premises, including:

- a. premises held by the Government or incorporated public officers;
- b. subsidized housing or transitional housing;
- c. premises held by the Urban Renewal Authority (URA) for rehousing eligible persons affected by URA projects;
- d. licensed hotels and guesthouses; and
- e. hospitals, nursing homes, residential care homes for the elderly, residential care homes for persons with disabilities, etc.

### **Legislative timetable**

The Bill will be introduced into the Legislative Council (LegCo) at the beginning of the 2019-20 legislative session.

It is proposed that the Bill, subsequent to its passage in the LegCo, should come into effect three months after its gazettal to allow enough time for the RVD and the first-owner to prepare for the submission of the first return under the Special Rates regime.

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