Time to calibrate the additional buyers stamp duty?

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Introduction

Additional Buyer's Stamp Duty (" **ABSD**") was first introduced in December 2011 as part of a slew of measures to cool a red hot residential property market. It is widely recognised to be an effective tool to pre-empt a speculative bubble from forming. While the Government had stated that it is still not time to lift the ABSD, this article investigates how the suite of cooling measures have worked so far, and in the light of the recent economic circumstances, both internal and external, whether it is timely to consider calibrating ABSD.

When ABSD first came into effect on 8 December 2011, a Singapore Citizen buying a third and subsequent residential property would be required to pay ABSD of 3% on the purchase price, a Singapore Permanent Resident was subject to ABSD of 3% on the second and subsequent residential property, and foreigners and entities were subject to ABSD of 10% in any residential property purchased. The market reaction to the measure was insipid and subsequently, the government decided that a higher rate was necessary for ABSD to work.

With effect from 12 January 2013, a Singapore Citizen is subject to ABSD of 7% on the purchase price of the second residential property and 10% on the third and subsequent residential property. A Singapore Permanent Resident pays 5% on the purchase of the first residential property and 10% on the second and subsequent residential property. Foreigners and entities are currently subject to 15% on the very first residential property purchased. ABSD does not apply to Singapore Citizens buying their first residential property.

This table shows the development of ABSD at a glance.

Additional Buyer's Stamp Duty (ABSD)		
	8 Dec 2011 to 11 Jan 2013	From 12 Jan 2013
Singapore Citizen	3% on 3rd and subsequent residential properties	7% on 2nd residential property 10% on 3rd and subsequent residential properties
Singapore Permanent Resident	3% on 2nd and subsequent residential properties	5% on 1st property 10% on 2nd and subsequent residential properties
Foreigner and entity	10% on all residential properties	15% on all residential properties

The effects of the ABSD

The new rates worked and have successfully reined in demand.

Home prices have declined continuously for seven quarters, steadily in some sectors like mass market homes and drastically in the luxurious segment as seen in some transactions in Sentosa. This is perhaps the longest streak of decline in home prices in more than a decade.

As revenue to the nation and a wealth redistribution tool, ABSD collected by Inland Revenue Authority of Singapore ("**IRAS**") in calendar year 2013 alone was S$1.502 billion based on tax statistics published by IRAS. This is a significant boost to the nation's coffers.

On a less positive note, we have witnessed "innovation" in the steps some families have taken in tax planning. The concept of "de-coupling" emerges. This is where one co-owner transfers his share in a residential property to the other co-owner so as to free up his name as a "first time" buyer to purchase another residential property ABSD-free.

There is also a surge in the number of purchasers holding residential properties on trust for beneficiaries who do not hold any existing residential property and as such would qualify as first time buyers not subject to ABSD. In some cases, such beneficiaries are minors below twenty-one (21) years old. It is not the intention of this article to probe the intent of the parties involved or examine whether the parties fully appreciate the legal consequences and complexities that such steps may lead to whether intentionally or otherwise. Suffice to say, it is not inconceivable that some of such parties may have been overzealous in attempting to avoid ABSD and overlook or even consciously disregard other risks that may potentially haunt them later, for instance, ownership issues or division in the event of matrimonial proceedings.

Some investors have decided to buy properties overseas instead. It is not the scope of this article to explore whether such overseas investments are sound. What is palpable is the capital outflow from Singapore.

In addition, after ABSD came into effect, demand for non-residential real estate had surged. It is clear that some investment demand had shifted from residential properties to commercial and industrial properties. This has resulted in a corresponding increase in the prices of commercial and industrial properties which impacted adversely the costs of doing business in Singapore in addition to rising labour costs.

On the supply side, ABSD is also a powerful tool to prevent "hoarding" by developers.

The purchase and development of residential properties in Singapore is governed by the Residential Property Act ("**RPA**"). The RPA requires a Housing Developer to apply to the Controller of Residential Property (the " **Controller**") for a Qualifying Certificate ("**QC**") if it is not a "Singapore company" as defined in the RPA which means a company incorporated in Singapore and the directors and members are all Singapore Citizens. Essentially, a Housing Developer subject to conditions of a QC is required to complete the construction of and obtain the Temporary Occupation Permit ("**TOP**") for the whole development within five (5) years. Such a Developer is required to sell all dwelling units in the development within two (2) years from issue of TOP. The Developer is not allowed to lease out any unsold dwelling units and shall not, without the prior written approval of the Controller sublease or dispose of the residential property or any part of it in its vacant or undeveloped state. The extension charge imposed by the Controller for extending the timeline imposed by a QC is hefty. While there is no official policy being published, it is widely known that the rate is 8% per annum on the purchase price of the residential property for the first year of extension, 16% for the second year of extension and 24% for the third *and each* subsequent year of extension.

There are two (2) instances where a developer is not subject to conditions of a QC.

1. Residential land sold by government is exempted from the RPA and hence the conditions of a QC.

2. A Singapore company where all its directors and members are Singapore Citizens is also not subject to QC conditions. Prior to ABSD, it was not uncommon for Developers not subject to QC conditions to withhold the sale of some units, and in some instances even all units in a development as part of its overall investment portfolio.

Being an "entity", a Housing Developer is subject to ABSD at 15%. Remission of ABSD is allowed for a corporate entity on the condition that it follows through the intention to develop the residential property acquired. In obtaining remission of ABSD, the Developer is required to give an undertaking to complete development and sell all residential units within five years from the date of acquisition for development sites of more than four (4) units and within three years for development sites of four (4) or less units. Hence, since the implementation of ABSD, a Housing Developer subject to QC conditions will face a double whammy of both the extension charge and ABSD plus interest at 5% per annum commencing fourteen (14) days after the date of acquisition of the site, should it fail to sell all units in a development within the respective timelines prescribed under the QC and the ABSD rules.

The net effect? Bid prices of government land are now less aggressive. Many Housing Developers have since gone to acquire and develop overseas, for instance, in UK, Malaysia and Australia. Collective sales of residential properties are far and few in between. While not all of these consequences are necessarily bad, there are still the inevitable capital outflows that cannot be positive for Singapore.

The circumstances now and what next?

Speculative demand for residential properties is non-existent. The Seller's Stamp Duty regime which slaps a hefty 16% of the sale price if the sale takes place within one (1) year from the date of purchase and on a sliding scale of 12% in the second year, 8% in the third year and 4% in the fourth year, successfully nipped this.

Investment demand is also muted. The increasing interest rates, escalating vacancies with the government curbs on foreign labour, and ballooning inventory keep this in check.

The framework of financing caps imposed as part of the cooling measures has also severely curtailed demand for properties. These include total debt servicing ratio ("**TDSR**") and the loan to value (" **LTV**") measures.

The TDSR requires banks and financial institutions to ensure that a borrower's monthly total debt obligations do not exceed 60% of his total gross monthly income in granting approval for all property loans. This ensures financial prudence among borrowers to prevent them from overstretching themselves in property purchases. It also protects the integrity of the banking system to ring-fence against the sub-prime type of crisis faced by the American banks in 2008.

In addition to the TDSR, the LTV rules cap the amount a borrower may borrow on each housing loan. For a borrower with no outstanding housing loan, a LTV limit of 80% is applicable. The LTV limit is 50% for a borrower with one outstanding housing loan and 40% for a borrower with two or more outstanding housing loans. The LTV limits apply notwithstanding a borrower is capable of affording a higher loan within the TDSR of 60%. With these financial measures, it is not just speculative demand that has been suppressed but investment demand too.

With the increase in supply of residential units both in public housing and private housing over the last few years, the various housing grants and the increase in income limits for applicants of HDB flats and Executive Condominiums, the needs of Singaporeans buying their homes are well taken care of. The affordability of homes has been very well managed by these government initiatives.

It is a very delicate balance the government needs to strike in ensuring affordable housing for Singaporeans, promoting home ownership to give Singaporeans a valuable stake in the country, and at the same time not stifle Singapore's position as a global city, capable of attracting capital and the best talents with an open market and a fair system.

The state of the property market is often an indicator of the economic well being of a nation. There are already sufficient measures to ease the burden of Singaporeans who want to own their homes. Moving forward, it is timely to take a hard look at “What next?” Though the government has stated many times that the prices have not fallen sufficiently to warrant a withdrawal or even the tweaking of some of the curbs, we should recognise that for Singapore to remain a global city, its real estate must remain attractive as an investment class not just to locals but a healthy number of foreigners as well. What appeared as a sharp increase in the prices between 2010 and 2013 should be seen in the context of Singapore’s rapid transformation and the low point which came from the sharp decline in 2008 and 2009 at the height of the global financial crisis. Once affordability is under control, it is unwise from a policy perspective to continue to drag down prices artificially and over dampen demand with a tool like ABSD. Jitters in the property market will weigh on the quality of the banks’ loan books and rock the integrity of the banking system which the TDSR and LTV limits seek to protect in the first place.

Singapore has been very successful in promoting home ownership. It is the core belief of its people that home ownership gives one a concrete and worthy stake that may be tapped upon in one’s old age as a source of financial support and as a wealth creation tool. Even though financial gain from properties cannot and should not be guaranteed, the removal or reduction of the ABSD will make it a little easier for someone who needs to sell at this stage in the present challenging market conditions and reverse some of the market anomalies mentioned earlier.

For a Housing Developer that is already subject to QC conditions, ABSD becomes an additional deterrent. Since implementation of ABSD, many Singapore developers have made substantial investments overseas. These capital outflows from the country cannot be healthy for the economy in the long run. It is timely to consider tweaking the ABSD rules in this aspect. A Housing Developer that is subject to QC conditions should be exempted from ABSD as there is no danger of hoarding by such Developers in any case with the ominously high QC extension charges.

Conclusion

The current market dynamics of rising interest rates, turmoil in the global stock markets, yield compression, coupled with the other cooling measures are more than sufficient to ensure that any gain if at all in home prices is kept in check. It is time to consider calibrating ABSD before home prices spiral down the abyss.

Singapore and Singaporeans cannot afford that.

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