



Inland Revenue Department
Hong Kong

STAMP OFFICE INTERPRETATION AND PRACTICE NOTES

NO. 5 (REVISED)

SPECIAL STAMP DUTY

These notes are issued for the information of duty payers and their tax representatives. They contain the Department's interpretation and practices in relation to the law as it stood at the date of publication. Duty payers are reminded that their right of appeal to the Court is not affected by the application of these notes.

These notes replace those issued in October 2011.

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Commissioner of Inland Revenue

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CONTENT

	Paragraph
Introduction	1
Scope	
The three conditions	5
Rates of SSD	6
“Acquisition” and “Disposal”	
Dates of “acquisition” and “disposal”	7
Deed of gift	11
Series of agreements with a common purchaser(s)	12
Conveyance on sale executed “in pursuance of” a chargeable agreement for sale	13
Mortgage or charge	14
Agreement to exchange or partition immovable property	16
“Conditions of sale” and “conditions of exchange”	20
Trust arrangements	21
Residential Property	23
Bare sites	25
Bare site with original building thereon demolished	27
Residential units built on bare site	28
Property disposed of after renovation or refurbishment	29
Part(s) of the property	30
Counting of holding period	32
Exemptions	33
Liable persons	35

Time for payment	36
Further SSD	39
Adjudication and Appeal	40
Refund of SSD	41
Penalty	42
FAQs	43
Annex	

INTRODUCTION

Under the Stamp Duty Ordinance, Cap. 117 (“the Ordinance”), vendors and purchasers are generally required to pay ad valorem stamp duty (“AVD”) on all agreements for the sale and purchase of residential property. The stamping requirements and the practices adopted by the Collector of Stamp Revenue (“the Collector”) in relation to AVD on agreements for sale and purchase of residential property and the subsequent conveyances on sale are outlined in the Stamp Office Interpretation and Practice Notes No. 1 (Revised).

2. To curb short-term speculation, the Financial Secretary announced, on 19 November 2010, the imposition of Special Stamp Duty (“SSD”) on top of AVD on the disposal of residential properties with effect from 20 November 2010, subject to the enactment of the relevant legislation. The Financial Secretary proposed that any residential property acquired on or after 20 November 2010, either by an individual or a company (regardless of where it is incorporated), and resold within 24 months, would be subject to SSD. The relevant legislation was enacted as the Stamp Duty (Amendment) Ordinance 2011 (“the 2011 Amendment Ordinance”) and came into effect on 20 November 2010. The principal provisions are contained in sections 29CA and 29DA of the Ordinance and heads 1(1AA) and 1(1B) in the First Schedule to the Ordinance.

3. On 26 October 2012, the Financial Secretary announced further measures to address the overheated residential property market, including adjusting the rates and extending the holding period to 36 months in respect of SSD. The Administration introduced the Stamp Duty (Amendment) Bill 2012 (“the 2012 Bill”) into the Legislative Council on 28 December 2012. The 2012 Bill was enacted as the Stamp Duty (Amendment) Ordinance 2014 (“the 2014 Amendment Ordinance”) and published in the Gazette on 28 February 2014. The SSD provisions in the 2014 Amendment Ordinance came into effect on 27 October 2012.

4. SSD is normally chargeable on a chargeable agreement for sale that is made upon the disposal (which includes a resale or transfer) of a residential property within 24 months (if the property was acquired on or after 20 November 2010 and before 27 October 2012) (“24-month Period”) or 36 months (if the property was acquired on or after 27 October 2012) (“36-month

Period”) after its acquisition. In case there is no chargeable agreement for sale made for such disposal, SSD will be chargeable on the conveyance on sale. These Practice Notes set out how the Collector will apply the SSD provisions and provide the Department’s practices in implementing them.

SCOPE

The three conditions

5. SSD is chargeable on a chargeable agreement for sale under section 29CA and head 1(1B) in the First Schedule to the Ordinance or a conveyance on sale under section 29DA and head 1(1AA) in the First Schedule to the Ordinance in respect of any residential property which was acquired on or after 20 November 2010 by the vendor or transferor and resold or transferred within the 24-month Period or the 36-month Period (as the case may be) after acquisition. In other words, the liability to SSD will arise if all of the following 3 conditions are met -

- (a) the transaction involves the sale and purchase or transfer of a residential property;
- (b) the property is acquired by the vendor or transferor on or after 20 November 2010; and
- (c) the property is disposed of by the vendor or transferor within the 24-month Period (if the property is acquired on or after 20 November 2010 and before 27 October 2012) or the 36-month Period (if the property is acquired on or after 27 October 2012) after acquisition.

Rates of SSD

6. The amount of SSD payable is calculated by reference to the stated consideration or the market value of the residential property, whichever is the higher, at the following regressive rates for different holding periods by the vendor or transferor before the disposal -

- (A) If the property was acquired on or after 20 November 2010 and before 27 October 2012,
 - (a) 15% if the property has been held for six months or less;
 - (b) 10% if the property has been held for more than six months but for 12 months or less; and
 - (c) 5% if the property has been held for more than 12 months but for 24 months or less.

- (B) If the property was acquired on or after 27 October 2012,
 - (a) 20% if the property has been held for six months or less;
 - (b) 15% if the property has been held for more than six months but for 12 months or less; and
 - (c) 10% if the property has been held for more than 12 months but for 36 months or less.

“ACQUISITION” AND “DISPOSAL”

Dates of “acquisition” and “disposal”

7. For the purposes of SSD, a person acquires a residential property on the date he enters into a chargeable agreement for sale as purchaser to purchase the property. If there is no such chargeable agreement for sale, the date of a conveyance to acquire the property is the date of acquisition. As a corollary, a person disposes of a residential property on the date he enters into a chargeable agreement as vendor to dispose of the property. If there is no such chargeable agreement for sale, the date of a conveyance to dispose of the property is the date of disposal.

8. Chargeable agreement for sale is defined under section 29A(1) of the Ordinance to mean an agreement for sale chargeable with stamp duty under head 1(1A) in the First Schedule to the Ordinance. Chargeable agreement for sale includes both provisional agreement for sale and purchase and formal agreement for sale and purchase. Where there is more than one chargeable agreement for sale in a residential property transaction entered into between the

same parties and on the same terms, the purchaser acquires and the vendor disposes of the property on the date of the first agreement. Furthermore, a chargeable agreement for sale may consist of two or more instruments, i.e. a principal agreement and supplemental agreement(s). In such circumstances, the date of the first of those instruments will be regarded as the date of acquisition by the purchaser and the date of disposal by the vendor.

9. Conveyance is defined under section 2 of the Ordinance to mean every instrument (including a surrender) and every decree or order of any court whereby any immovable property is transferred to or vested in any person. For a sale and purchase transaction, a conveyance is the deed of assignment. A conveyance also includes a deed of gift for a non-sale and purchase transfer of property. Where the conveyance consists of two or more instruments, the purchaser acquires and the vendor disposes of the property on the date of the first of those instruments.

10. The Examples at the **Annex** illustrate the application and computation of SSD under different scenarios.

Deed of gift

11. If a person acquires a residential property on or after 20 November 2010 and transfers it, within the 24-month Period or the 36-month Period (as the case may be) after acquisition, to another person without a resale, the person has disposed of the property for the purposes of SSD. Unless the transferee is the spouse, parent, child, brother or sister of the transferor, the deed of gift or conveyance is chargeable with SSD in the same manner as an agreement for sale and purchase.

Series of agreements with a common purchaser(s)

12. The following sets out the SSD treatment where two chargeable agreements for sale are entered into in respect of the same residential property and both agreements involve a common purchaser(s) under different scenarios -

Scenario 1 (where the number of purchasers in the second agreement is more than that in the first agreement)

<u>Instrument</u>	<u>Vendor</u>	<u>Purchasers</u>
Agreement 1	A	B + C
Agreement 2	A	B + C + D

A signs Agreement 1 in which he contracts to sell a residential property to B and C. Before A completes the transaction, he signs Agreement 2 in which he contracts to sell the property to B, C and D. In this case, B and C acquired the property on the date of Agreement 1. By entering into Agreement 2, they are regarded as having disposed of one-third of the property to D on that date. If the dates of acquisition and disposal by B and C are within the 24-month Period or the 36-month Period (as the case may be), SSD at the appropriate rate will be applied to the consideration stated in Agreement 2 or the market value of the residential property, whichever is the higher, but reduced by two-thirds representing the interests of B and C which already vested in them under Agreement 1.

Scenario 2 (where the number of purchasers in the second agreement is less than that in the first agreement)

<u>Instrument</u>	<u>Vendor</u>	<u>Purchasers</u>
Agreement 1	A	B + C + D
Agreement 2	A	B

A signs Agreement 1 in which he contracts to sell a residential property to B, C and D. Before A completes the transaction, he signs Agreement 2 in which he contracts to sell the property to B alone. In this case, B, C and D acquired the property on the date of Agreement 1. By entering into Agreement 2, C and D are regarded as having disposed of two-thirds of the property to B on that date. If the dates of acquisition and disposal by C and D are within the 24-month Period or the 36-month Period (as the case may be), SSD at the appropriate rate will be applied to the consideration stated in Agreement 2 or the market value of the residential property, whichever is the higher, but reduced by one-third representing the interest of B which already vested in him under Agreement 1.

Conveyance on sale executed “in pursuance of” a chargeable agreement for sale

13. The following scenarios explain how the SSD provisions are applied in relation to a conveyance on sale executed “in pursuance of” a chargeable agreement for sale -

Scenario 3 (where a conveyance on sale in respect of a residential property is executed “in pursuance of” a chargeable agreement for sale in favour of a person named in the agreement as the purchaser and another person(s) who is (are) not so named in the agreement)

<u>Instrument</u>	<u>Vendor</u>	<u>Purchasers</u>
Agreement	A	B + C
Assignment	A	B + C + D

A signs an agreement in which he contracts to sell a residential property to B and C. The conveyance is subsequently made in favour of B, C and D. In this case, B and C acquired the property on the date of the Agreement. By executing the Assignment, B and C are regarded as having disposed of one-third of the property to D on that date. If the dates of acquisition and disposal by B and C are within the 24-month Period or the 36-month Period (as the case may be), SSD at the appropriate rate will be applied to the consideration stated in the Assignment or the market value of the residential property, whichever is the higher, and then reduced by two-thirds representing the interests of B and C which already vested in them under the Agreement.

Scenario 4 (where a conveyance on sale in respect of a residential property is executed “in pursuance of” a chargeable agreement for sale in favour of some (but not all) of the persons named in the agreement as the purchasers)

<u>Instrument</u>	<u>Vendor</u>	<u>Purchasers</u>
Agreement	A	B + C + D
Assignment	A	B

A signs an agreement in which he contracts to sell a residential property to B, C and D. The conveyance is subsequently made in favour of B alone. In this case, B, C and D acquired the property on the date of the Agreement. By executing the Assignment, C and D are regarded as having disposed of two-thirds of the property to B on that date. If the dates of acquisition and disposal by C and D are within the 24-month Period or the 36-month Period (as the case may be), SSD at the appropriate rate will be applied to the consideration stated in the Assignment or the market value of the residential property, whichever is the higher, and then reduced by one-third representing the interest of B which already vested in him under the Agreement.

Mortgage or charge

14. All along, the Collector takes the view that a bona fide mortgage or charge in respect of residential property does not fall within the definition of “agreement for sale” in section 29A(1)(c) of the Ordinance as it confers no immediate or automatic right of sale of the property. The mortgagee will exercise its rights only in the case of the mortgagor’s default. As such, a bona fide mortgage or charge is not considered to be an agreement for sale and is therefore not chargeable to SSD. Only those disguised mortgages (e.g. incorporating an irrevocable power of attorney) which do not merely provide security for money advanced but give, expressly or impliedly, an immediate or automatic right of disposal of a residential property, will be regarded as agreements for sale and be subject to SSD.

15. When calculating the holding period of a mortgaged property that is disposed of, the date of a bona fide mortgage or charge shall not be taken into account. The holding period will count from the date when the vendor (i.e. the borrower) acquired the property to the date when he or his agent (such as an appointed receiver) disposed of the property.

Agreement to exchange or partition immovable property

16. The principle of charging stamp duty on the “equality money” in relation to a chargeable agreement under which the exchange of any immovable property for any other immovable property or the partition of any

immovable property is agreed, as enshrined in section 29C(10) of the Ordinance, will apply in calculating SSD payable, if any, on such instrument. In other words, SSD will be calculated by reference to the “equality money” payable for the exchange or partition (subject to paragraph 17 below). As the agreement for exchange or partition is in essence an agreement for sale, the date of signing it will be regarded as the dates of “acquisition” and “disposal” of the properties concerned.

17. Where the stated “equality money” under an agreement for exchange or partition is less than the full difference in the values of the properties concerned, SSD will be charged on the full difference (section 29F of the Ordinance).

18. If the dates of acquisition of the exchanged properties by the respective parties in the exchange are different, the earlier one will be taken for counting the holding period in ascertaining SSD payable on the agreement for exchange.

19. The Collector accepts that SSD is chargeable on the “equality money” for an exchange of properties where both of the properties to be exchanged are residential properties; or where a residential property is exchanged for a non-residential property. For the purpose of ascertaining SSD payable, if any, on the agreement for exchange, only the date of acquisition of the residential property in the exchange will be relevant for counting the holding period. The following scenarios illustrate these principles -

Scenario 5

Mr. X acquired a residential property A on 1 January 2011. Later, Mr. Y acquired a residential property B on 1 July 2011. On 30 September 2011, they executed an agreement for exchange with equality money being \$1M.

Holding period

The date of acquisition of property A (1 January 2011) will be taken for counting the holding period. The holding period is therefore more than 6 months but for 12 months or less (i.e. from 1 January 2011 to 30 September 2011).

Amount of SSD payable

The applicable SSD rate is 10% and thus the amount of SSD payable is $\$1\text{M} \times 10\% = \0.1M

Scenario 6

Same as Scenario 5 but property A was a non-residential property.

Holding period

The date of acquisition of residential property B (1 July 2011) will be taken for counting the holding period. The holding period is therefore 6 months or less (i.e. from 1 July 2011 to 30 September 2011).

Amount of SSD payable

The applicable SSD rate is 15 % and thus the amount of SSD payable is $\$1\text{M} \times 15\% = \0.15M

Scenario 7

Mr. X acquired a residential property A on 15 September 2012. Later, Mr. Y acquired a residential property B on 1 December 2012. On 30 September 2013, they executed an agreement for exchange with equality money being \$1M.

Holding period

The date of acquisition of property A (15 September 2012) will be taken for counting the holding period. The holding period is therefore more than 12 months but for 24 months or less (i.e. from 15 September 2012 to 30 September 2013).

Amount of SSD payable

The applicable SSD rate is 5% and thus the amount of SSD payable is $\$1\text{M} \times 5\% = \0.05M

Scenario 8

Mr. X acquired a non-residential property A on 1 December 2012. Later, Mr. Y acquired a residential property B on 1 July 2013. On 30 November 2013, they executed an agreement for exchange with equality money being \$1M.

Holding period

The date of acquisition of property B (1 July 2013) will be taken for counting the holding period. The holding period is therefore less than 6 months (i.e. from 1 July 2013 to 30 November 2013).

Amount of SSD payable

The applicable SSD rate is 20% and thus the amount of SSD payable is $\$1\text{M} \times 20\% = \0.2M

“Conditions of sale” and “conditions of exchange”

20. In general, a developer acquires a bare site, which is permitted for residential development, from the Government by means of a “conditions of sale” (in the case of public auction / tender) or a “conditions of exchange” (in the case of land exchange). A “conditions of sale” and a “conditions of exchange” are neither a chargeable agreement for sale nor a conveyance. It comes under the category of grants by the Government, Government leases and surrenders of such grants and leases. It is an instrument generally exempted from stamp duty. For the purposes of SSD, there will be no “acquisition” by the developer. Hence, SSD is not applicable to the developer when it sells the land to a purchaser.

Trust arrangements

21. Trust arrangements may be structured in the form of discretionary trust or fixed trust. For a discretionary trust, the transfer of a residential property from the settlor to the trustee of the discretionary trust or vice versa constitutes the transfer of the legal and beneficial ownership of the property, and SSD will arise if the conditions specified in paragraph 5 above are met. The different scenarios of the transfer of a residential property into and out of a trust are outlined below:

Scenario 9 (Settlor A acquired a residential property on or after 20 November 2010 and transferred it into a discretionary trust within 24 months from the date of its acquisition. X is the trustee of the trust.)

The transfer of the residential property from A to X will be subject to SSD as there is a transfer of legal and beneficial ownership.

Scenario 10 (On appointing a new trustee Y, X transferred the residential property to Y within 24 months. The transfer was made merely upon the change of trustee.)

Provided that the circumstances exempting the conveyance or transfer from stamp duty under section 27(5) of the Ordinance (i.e. the conveyance or transfer is made for the purpose of effectuating the appointment of a new trustee) are set forth in the conveyance or transfer, no SSD is payable on the transfer of the residential property from X to Y.

Scenario 11 (Y disposes of the residential property to a third party.)

Upon the disposal of the residential property to a third party, for the purpose of SSD, Y is taken to have acquired the property on the date when the property was first transferred into the trust (i.e. the date on which A transferred the property to X).

22. The potential liability to SSD in the case of a fixed trust or bare trust, which is set up for the sole benefit of the original settlor, is different from those of discretionary trusts. Using the scenarios in paragraph 21 for illustration, since Settlor A remains to be the beneficial owner of the residential property after the transfer of the property to Trustee X, the liability to SSD will only arise when Trustee Y disposes of the property to the third party. In this case, the holding period will count from the date when Settlor A acquired the property to the date of disposal of the property by Trustee Y.

RESIDENTIAL PROPERTY

23. Residential property is defined under section 29A(1) of the Ordinance as any immovable property other than “non-residential property”. “Non-residential property” is defined as any immovable property which, under the existing conditions of -

- (a) a Government lease or an agreement for a Government lease;

- (b) a deed of mutual covenant within the meaning of section 2 of the Building Management Ordinance (Cap. 344);
- (c) an occupation permit issued under section 21 of the Buildings Ordinance (Cap. 123); or
- (d) any other instrument which the Collector is satisfied effectively restricts the permitted user of the property,

may not be used, at any time during the term of the Government lease in respect of the property or during the term of the Government lease that has been agreed for in respect of the property (as is appropriate), wholly or partly for residential purposes.

24. Hence, classification of premises in terms of “residential property” or “non-residential property” is by reference to their permitted use rather than their actual use.

Bare sites

25. In the case when a developer acquires a bare site, which is permitted for residential development, from the Government and then sells the bare site in its existing condition to another developer, the sale of the bare site is not chargeable with SSD even if the duration falls within the 24-month Period or the 36-month Period. For the purposes of SSD, there will be no “acquisition” by the developer. This is because the “conditions of sale” and “conditions of exchange” are neither a chargeable agreement for sale nor a conveyance as explained in paragraph 20 above.

26. However, if a developer acquires a bare site, which is permitted for residential development, not from the Government and, instead of building on it, sells or transfers the bare site to another developer within the 24-month Period or the 36-month Period, SSD will be chargeable. This is because under this scenario, the first mentioned developer has “acquired” the bare site and subsequently “disposed of” the same.

Bare site with original building thereon demolished

27. According to sections 29CA(4)(b) and 29DA(4)(b) of the Ordinance, the sale or transfer of a piece of land, which is permitted for residential development, after demolition of the original building existed at the time of acquisition of the piece of land, within the 24-month Period or the 36-month Period is not chargeable with SSD. However, if the developer acquires a residential building and sells or transfers the same building within the 24-month Period or the 36-month Period, such sale or transfer will be chargeable with SSD as in other normal cases.

Residential units built on bare site

28. In the case where a developer purchases a piece of land, which is permitted for residential development, demolishes the existing building (if any), builds on it, and then sells the residential units built thereon within the 24-month Period or the 36-month Period, SSD is not applicable regardless of whether the developer purchases the piece of land from the Government or from another developer. It is because the developer did not acquire the residential units.

Property disposed of after renovation or refurbishment

29. Where a person acquires a residential property, carries out renovation works or refurbishment on it after acquisition, and then sells or transfers the property after the renovation or refurbishment within the 24-month Period or the 36-month Period from the date of acquisition, the person will be regarded as having disposed of the same property. SSD will be imposed on the chargeable agreement for sale or the conveyance on sale under which the vendor disposes of the property to the purchaser.

Part(s) of the property

30. Where a person acquires a residential property by parts at different times and subsequently disposes of the property such that only part of the residential property is disposed of within the 24-month Period or the 36-month Period after acquisition of that part, SSD is chargeable only by reference to that part of the property. The parties to the chargeable agreement for sale or the conveyance on sale are required to indicate the consideration of the part of the

residential property that is disposed of within the 24-month Period or the 36-month Period (as the case may be) after acquisition. The parties should apportion the consideration to the best of their knowledge and information. They may decide whether a valuation report is needed for the purpose. If the Collector is of the opinion that the part consideration does not represent the value of the part concerned, the Collector may substitute that value for the part consideration in calculating the amount of SSD payable.

31. Where a person acquires a residential property by parts at different times and subsequently disposes of the property such that different parts of the property are disposed of within the 24-month Period or the 36-month Period (as the case may be) from their respective acquisition dates, SSD is calculated at the applicable rates by reference to the respective holding periods of the different parts in question. The amount of SSD chargeable is the total of the SSD chargeable with those different parts. The parties to the transaction are required to indicate the consideration for the different parts of the residential property chargeable to SSD and their respective holding periods by the vendor. The following scenario illustrates this point -

Scenario 12

Mr. X acquired Property A (comprising a residential unit) and Property B (comprising another residential unit) in the same development at \$10M on 18 September 2012 and \$12M on 24 June 2013 respectively. He later disposed of Properties A and B together at \$26M to a third party, Mr. Y, by entering into a chargeable agreement for sale with Mr. Y on 25 October 2013. The market values of Properties A and B at the time of disposal are \$12M and \$14M respectively.

Property A

Holding period: more than 12 months but for 24 months or less

Applicable SSD rate: 5%

Property B

Holding period: 6 months or less

Applicable SSD rate: 20%

The amount of SSD payable: $\$12\text{M} \times 5\% + \$14\text{M} \times 20\% = \3.4M

COUNTING OF HOLDING PERIOD

32. For the purposes of SSD, the counting of the holding period of a residential property is based on calendar months. The period from a certain day in a month to the preceding day in the following calendar month is counted as 1 month. For example, the period from 30/11/2010 to 29/12/2010 is one month. If there is no corresponding preceding day in the relevant subsequent month, the month calculation ends on the previous available day of that month. For example, the period from 30/1/2011 to 28/2/2011 is one month, since the date of “29/2/2011” does not exist. See further illustration in the following examples -

Example 1

Date of acquisition: 20 November 2010

Date of disposal: 19 May 2011

Holding period: 6 months (i.e. not more than 6 months)

Example 2

Date of acquisition: 31 August 2011

Date of disposal: 1 March 2012

Holding period: 6 months and 1 day (i.e. more than 6 months but for 12 months or less)

Example 3

Date of acquisition: 1 March 2011

Date of disposal: 1 March 2012

Holding period: 12 months and 1 day (i.e. more than 12 months but for 24 months or less)

Example 4

Date of acquisition: 1 March 2013

Date of disposal: 1 March 2015

Holding period: 24 months and 1 day (i.e. more than 12 months but for 36 months or less)

EXEMPTIONS

33. Payment of the SSD is exempted in the following cases -

- (a) Nomination of a close relative(s) (that is, spouse, parents, children, brothers or sisters) of the original purchaser(s) to take up the assignment of the residential property. If there is more than one nominee, the nominees must also be close relatives; and sale or transfer of the residential property to a close relative(s).

The Ordinance does not define “spouse”, “parent”, “child”, “brother” or “sister”. For the purposes of SSD, the Collector will adopt the ordinary meaning and accepts persons who are blood-related, half blood-related, and also persons who have spouse relationship, adoption or step relationship, as the parents, spouse, children, brothers or sisters of the nominator, vendor or transferor (as the case may be).

- (b) Addition / deletion of name(s) to / from a chargeable agreement for sale or a conveyance on sale in respect of the residential property if the person(s) is the close relative(s) of the original purchaser(s).
- (c) Sale or transfer of residential properties by a court order or pursuant to a court order. The exemption covers a compulsory sale of residential property under a Compulsory Sale Order granted under the Land (Compulsory Sale for Redevelopment) Ordinance (Cap. 545), and also any sale of residential property where the residential property was transferred to or vested in the vendor by or pursuant to any decree or order of any court, including a foreclosure order obtained by the mortgagee whether or not it falls under the definition of a financial institution within the meaning of section 2 of the Inland Revenue Ordinance (“IRO”). For this purpose, “court” means any court of the Hong Kong Special Administrative Region of competent jurisdiction.
- (d) Sale of the estate of a deceased person, which involves residential property, by the executor or personal representative and sale or transfer of a residential property

by a person whose property is inherited from a deceased person's estate or passed to that person under a will, the law of intestacy or right of survivorship.

- (e) The residential property sold relates solely to a bankrupt's estate or the property of a company which is being wound up by the court by reason of its inability to pay debts.
- (f) Sale of mortgaged residential properties in various forms by a mortgagee which is a financial institution within the meaning of section 2 of the IRO, or by a receiver appointed by such a mortgagee.
- (g) Sale or transfer of residential properties to the Government; and
- (h) Sale or transfer of residential properties between associated bodies corporate.

34. It should be noted that under the circumstances mentioned in paragraph 33 above, only the payment of SSD is exempted; the underlying agreements for sale or transfers would remain chargeable agreements for sale or transfers under which the purchasers or transferees "acquired" the immovable properties in question. Therefore, when the properties are further disposed of subsequently, any SSD liability will be determined by reference to such "acquisition" dates.

LIABLE PERSONS

35. Same as that for AVD, the vendor and the purchaser to the property transaction are jointly and severally liable for paying SSD. Heads 1(1AA) and (1B) in the First Schedule to the Ordinance provide that all parties to the instruments, i.e. a chargeable agreement for sale and a conveyance on sale, and all other persons executing the instruments are liable to pay SSD. However, signing a provisional agreement for sale and purchase by estate agents, or a formal agreement for sale and purchase or a conveyance on sale by solicitors, in the capacity of witness, will not render them becoming one of the liable

persons. On the other hand, however, a person who uses such an instrument may be liable to SSD, e.g. an estate agent suing the vendor / purchaser for the agency fee based on a provisional agreement for sale and purchase.

TIME FOR PAYMENT

36. Head 1(1B) in the First Schedule to the Ordinance stipulates that a chargeable agreement for sale is to be stamped with SSD at the same time as that for AVD, i.e. in general, within 30 days after the date on which the agreement for sale is entered into. Likewise, head 1(1AA) in the First Schedule to the Ordinance requires a conveyance on sale to be stamped with SSD at the same time as that for AVD, i.e. within 30 days after the date on which the conveyance is executed.

37. Sections 68 and 70 of the Ordinance provide that if the time for stamping any instrument chargeable with SSD falls before the day on which the 2011 Amendment Ordinance and the 2014 Amendment Ordinance respectively are published in the Gazette¹, the time for stamping is to be replaced by a period of 30 days commencing immediately after that day.

38. Hence, in respect of any agreement for sale or conveyance on sale chargeable with SSD which is executed between 20 November 2010 (earliest date of introduction of SSD) and 30 May 2011 (the time for stamping an instrument executed on such date is 30 days after execution, i.e. 29 June 2011), the applicable SSD has to be paid within 30 days from 30 June 2011 (i.e. on or before 30 July 2011). Since 30 July 2011 is a Saturday, the due date for payment is extended to 1 August 2011. In respect of any agreement for sale or conveyance on sale which is executed on or after 27 October 2012 (the effective date of adjusted SSD) and already stamped before the date of Gazettal, the additional SSD, representing the difference between the old rate and the new rate, has to be paid within 30 days from 28 February 2014 (i.e. on or before 31 March 2014 as 30 March 2014 is a Sunday).

¹ The 2011 Amendment Ordinance and 2014 Amendment Ordinance were gazetted on 30 June 2011 and 28 February 2014 respectively.

FURTHER SSD

39. By virtue of sections 27 and 29F of the Ordinance, where the amount of the stated consideration shown in a chargeable agreement for sale or a conveyance on sale is less than the market value of the property, all applicable stamp duty (which includes AVD, SSD and Buyer's Stamp Duty²) will subsequently be charged on the full market value of the property. In order to let the purchaser and the vendor know as early as possible the total amount of SSD payable, where the Collector considers that the stated consideration is inadequate, the assessment to demand further SSD will be made within 40 days after the submission of the application for stamping.

ADJUDICATION AND APPEAL

40. There are no provisions in the Ordinance allowing the remission of SSD on the ground of financial hardship or the personal circumstances of the duty payers. However, a duty payer may appeal against SSD payable on an instrument on the grounds that (i) the instrument is not chargeable to SSD; and/or (ii) the amount of SSD chargeable on such instrument is not correct (section 14 of the Ordinance). To pursue this avenue, the duty payer should first request for an adjudication of the instrument by the Collector under section 13 of the Ordinance (a fee for which is payable). Adjudication is the process by which the Collector expresses his opinion (called the "assessment") on the 2 questions above-mentioned. If the duty payer is dissatisfied with the assessment, he may, within one month from the date on which the assessment was made, lodge an appeal to the District Court. The notice of appeal should be served on the Registrar of the District Court at 6/F., Wanchai Tower, 12 Harbour Road, Hong Kong.

REFUND OF SSD

41. In case a chargeable agreement for sale is cancelled, annulled or rescinded or is otherwise not performed (not because of the occurrence of a further resale as described in section 29C(5AA) of the Ordinance), an

² See Stamp Office Interpretation and Practice Notes No. 7.

application for refund of SSD can be made by the person who paid the SSD to the Collector within two years after the cancellation, annulment or rescission of the agreement, or in the case where the agreement is not performed, two years after the agreed date of completion of the transaction.

PENALTY

42. If a chargeable agreement for sale is not stamped with SSD by the due date, section 9(1) of the Ordinance provides for the imposition of a late stamping penalty in addition to the normal duty. Outstanding SSD and the applicable penalty are recoverable by the Collector as a civil debt from all the liable parties. Besides, any unstamped chargeable agreement for sale or conveyance cannot be registered at the Land Registry and therefore both the purchaser and the vendor cannot obtain the legal benefits associated with the registration. For cases where the additional SSD is payable, penalty for late payment would be imposed, if any, on the additional SSD where the instrument had already been stamped with SSD at the applicable old rate before the date of Gazettal of the 2014 Amendment Ordinance

FAQs

43. The Department has prepared FAQs in its web site (www.ird.gov.hk) to provide answers to common questions encountered.

**Examples Illustrating the Application and
Computation of Special Stamp Duty**

Residential property acquired before 20 November 2010

Example 1

Mr. Chiu signed a provisional agreement for sale to acquire a residential property on 15 September 2010. Subsequently, he signed a provisional agreement for sale to dispose of the property on 20 December 2010. Any SSD liability when Mr. Chiu disposed of the property?

As Mr. Chiu acquired the subject property before 20 November 2010 (the effective date of SSD), no SSD is payable when he signed the provisional agreement for sale to dispose of the property on 20 December 2010.

Residential property acquired between 20 November 2010 and 26 October 2012

Example 2 (Residential property disposed of / transferred after 24 months from the date of acquisition)

Mr. Chan acquired a residential property on 22 March 2011 and disposed of it on 30 November 2013. Any SSD liability when Mr. Chan disposed of the property?

No SSD is payable because the subject property is disposed of / transferred after 24 months from the date of acquisition.

Example 3 (Property holding period is 6 months or less)

Mr. Ho acquired a residential property on 10 September 2011 and disposed of it for \$6.5M on 9 March 2012. How to calculate the holding period of the property? What is the rate of SSD? What is the amount of SSD payable?

For the purposes of SSD, the property holding period is calculated based on the calendar months, i.e. the period from a certain day in a month to the preceding day in the following calendar month is counted as 1 month. In the above example, Mr. Ho has held the property for exactly 6 months. The applicable rate of SSD is therefore 15%. The amount of SSD payable is \$975,000, i.e. 15% of \$6.5M.

Example 4 (Property holding period is more than 6 months but not more than 12 months)

Mr. Ho acquired a residential property on 10 September 2011 and disposed of it for \$6.5M on 10 March 2012. How to calculate the holding period of the property? What is the rate of SSD? What is the amount of SSD payable?

Mr. Ho disposed of the subject property on 10 March 2012. He has held the property for more than 6 months but not more than 12 months. The applicable rate of SSD is 10%. The amount of SSD payable is \$650,000, i.e. 10% of \$6.5M.

Example 5 (Property holding period is more than 12 months but not more than 24 months)

Mr. Wong acquired a residential property on 2 February 2011 and disposed of it for \$1.8M on 18 August 2012. How to calculate the holding period of the property? What is the rate of SSD? What is the amount of SSD payable?

The subject property was acquired after 19 November 2010 and disposed of for more than 12 months but within 24 months from the date of acquisition. The applicable SSD rate is 5%. The amount of SSD payable is \$90,000, i.e. 5% of \$1.8M.

Example 6 (Property holding period is more than 24 months)

Mr. Wong acquired a residential property on 15 October 2012 and disposed of it for \$4M on 15 December 2014. How to calculate the holding period of the property? What is the rate of SSD? What is the amount of SSD payable?

Since the subject property was acquired before 27 October 2012 and disposed of after more than 24 months from the date of acquisition, no SSD is payable.

Residential property was acquired on or after 27 October 2012

Example 7 (Property holding period is 6 months or less)

Mr. Wong acquired a residential property on 1 November 2012 and disposed of it for \$3M on 1 January 2013. How to calculate the holding period of the property? What is the rate of SSD? What is the amount of SSD payable?

The subject property was acquired after 26 October 2012 and disposed of within 6 months from the date of acquisition. The applicable SSD rate is 20%. The amount of SSD payable is \$600,000, i.e. 20% of \$3M.

Example 8 (Property holding period is more than 6 months but not more than 12 months)

Mr. Wong acquired a residential property on 1 November 2012 and disposed of it for \$3M on 15 September 2013. How to calculate the holding period of the property? What is the rate of SSD? What is the amount of SSD payable?

The subject property was acquired after 26 October 2012 and disposed of after more than 6 months but within 12 months from the date of acquisition. The applicable SSD rate is 15%. The amount of SSD payable is \$450,000, i.e. 15% of \$3M.

Example 9 (Property holding period is more than 24 months but not more than 36 months)

Mr. Wong acquired a residential property on 1 November 2012 and disposed of it for \$4M on 15 December 2014. How to calculate the holding period of the property? What is the rate of SSD? What is the amount of SSD payable?

The subject property was acquired after 26 October 2012 and disposed of after more than 12 months but within 36 months from the date of acquisition. The applicable SSD rate is 10%. The amount of SSD payable is \$400,000, i.e. 10% of \$4M.