



Inland Revenue Department
Hong Kong

STAMP OFFICE INTERPRETATION AND PRACTICE NOTES

NO. 7

BUYER'S 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.

WONG Kuen-fai
Commissioner of Inland Revenue

July 2014

STAMP OFFICE INTERPRETATION AND PRACTICE NOTES

No. 7

CONTENT

	Paragraph
Introduction	1
Scope	5
Rate of BSD	7
Meaning of “HKPR”	8
Chargeable Instrument	
Basis of Charge	10
Deed of gift	14
Series of agreements with a common purchaser(s)	15
Conveyance on sale executed “in pursuance of” a chargeable agreement for sale	16
Mortgage or charge	17
Trust arrangements	18
Estate	19
Joint acquisition	20
Residential Property	21
Car parking Space	23
Instrument for Exchange or Partition of Immovable Property	
Exchange of residential properties	24
Exchange of residential property for non-residential property	26
Partition of residential property	27
Exemptions and Refunds	
Hong Kong Permanent Resident	28
Close relatives	31
Replacement property	34
Court order	37

Mortgaged property	38
Mentally incapacitated person	39
Gift to charitable institution	44
Associated bodies corporate	45
Refund for Redevelopment	46
Liable Person	53
Admissibility of Instrument	54
Time for Payment	55
Further BSD	57
Adjudication and Appeal	58
Refund of BSD	59
Penalty	60
FAQs	62
Annex	

INTRODUCTION

Under the Stamp Duty Ordinance, Cap. 117 (“the Ordinance”), ad valorem stamp duty (“AVD”) is generally payable 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, Special Stamp Duty (“SSD”) is imposed on top of AVD on the short-term disposal of residential properties with effect from 20 November 2010. To further address the overheated residential property market, the SSD measure was strengthened by extending the property holding period for charging SSD and increasing the applicable rates of SSD. The relevant law took effect from 27 October 2012. The stamping requirements and the practices adopted by the Collector in relation to SSD are outlined in the Stamp Office Interpretation and Practice Notes No. 5 (Revised).

3. To accord priority to the home ownership needs of Hong Kong permanent resident (“HKPR”) buyers in the midst of the tight supply situation, the Financial Secretary announced on 26 October 2012 that apart from AVD and the enhanced SSD as mentioned in paragraph 2 above, a Buyer’s Stamp Duty (“BSD”) would be imposed on the acquisitions of residential properties. To implement the proposed BSD, the Administration introduced the Stamp Duty (Amendment) Bill 2012 (“the Bill”) into the Legislative Council on 28 December 2012. The Bill was enacted as the Stamp Duty (Amendment) Ordinance 2014 (“the Amendment Ordinance”) and published in the Gazette on 28 February 2014. The BSD provisions in the Amendment Ordinance came into effect on 27 October 2012 (“Effective Date”). The principal provisions of BSD are contained in sections 29CB and 29DB of the Ordinance and heads 1(1AAB) and 1(1C) in the First Schedule to the Ordinance.

4. BSD is generally chargeable on a chargeable agreement for sale of any residential property executed on or after the Effective Date (see paragraph 11 for the meaning of chargeable agreement for sale). The major exception to this general charge is where the purchaser is a HKPR acting on his or her own behalf in acquiring the property. In case there is no chargeable agreement for

sale made for such acquisition, BSD will be chargeable on the conveyance on sale. These Practice Notes set out how the Collector will apply the BSD provisions and provide the Department's practices in implementing them.

SCOPE

5. Unless specifically exempted (see paragraphs 28 to 52 in respect of the exemptions), BSD is chargeable on an agreement for sale or a conveyance on sale for the acquisition of any residential property under section 29CB and head 1(1C) in the First Schedule to the Ordinance or section 29DB and head 1(1AAB) in the First Schedule to the Ordinance respectively if the instrument is executed on or after the Effective Date.

6. In general, if an instrument is not chargeable with AVD, it is not chargeable with BSD. BSD is also not applicable to a chargeable agreement for sale executed on or after the Effective Date if it was preceded by another chargeable agreement for sale executed between the same parties and on the same terms before that date.

Rate of BSD

7. The amount of BSD payable is calculated by reference to the stated consideration or the market value of the residential property, whichever is the higher, at a rate of 15%. The BSD payable on a chargeable agreement for sale or a conveyance on sale is in addition to any other stamp duty with which the instrument is chargeable, for example, AVD and SSD.

Meaning of HKPR

8. Under the Ordinance, HKPR means a person who holds a valid permanent identity card ("PIC"). HKPRs also include the aged, the blind or the infirm who are not required to register or apply for the issue of an identity card or for the renewal of an identity card and are entitled to be issued with a PIC if they make an application for it.

9. Companies are separate legal entities independent of their shareholders and directors and do not fall within the definition of "HKPR". A limited company, regardless of the residency status of its shareholders and

directors, will be liable to BSD if it acquires a residential property on or after the Effective Date.

CHARGEABLE INSTRUMENT

Basis of Charge

10. BSD applies to a chargeable agreement for sale of any residential property executed on or after the Effective Date. If there is no such chargeable agreement for sale for the residential property transaction, the conveyance on sale of the property will be subject to BSD.

11. 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 one that is chargeable with AVD is chargeable with BSD. 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, only the principal agreement is chargeable with BSD.

12. 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 first of those instruments will be subject to BSD, if applicable.

13. The Examples at the **Annex** illustrate the application and computation of BSD under different scenarios.

Deed of gift

14. If a non-HKPR acquires a residential property on or after the Effective Date by means of deed of gift, the deed or conveyance is chargeable with BSD in the same manner as a chargeable agreement for sale.

Series of agreements with a common purchaser(s)

15. The following sets out how BSD will be charged 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. Both B and C are HKPRs. Before the transaction is completed, A signs Agreement 2 in which he contracts to sell the property to B, C and D. D is a non-HKPR. In this case, B and C acquire the property on the date of Agreement 1 and D is regarded as having acquired one-third of the property from B and C on the date of Agreement 2. Unless specifically exempted, BSD will be charged on the consideration stated in Agreement 2 or the market value of the residential property, whichever is the higher.

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. B is a non-HKPR. Before the transaction is completed, A signs Agreement 2 in which he contracts to sell the property to B alone. In this case, B, C and D acquire the property on the date of Agreement 1 and B is regarded as having acquired two-thirds of the property from C and D on the date of Agreement 2. Unless specifically exempted, BSD will be charged on Agreement 1 and Agreement 2 based on the consideration stated in the respective agreements or the market value of the residential property, whichever is the higher.

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

16. The following scenarios explain how the BSD 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. Both B and C are HKPRs. The conveyance is subsequently made in favour of B, C and D. D is a non-HKPR. In this case, B and C acquire the property on the date of the Agreement and D is regarded as having acquired one-third of the property from B and C on the date of the Assignment. Unless specifically exempted, BSD will be charged on the consideration stated in the Assignment or the market value of the residential property, whichever is the higher.

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. B is a non-HKPR. The conveyance is subsequently made in favour of B alone. In this case, B, C and D acquire the property on the date of the Agreement and B is regarded as having acquired two-thirds of the property from C and D on the date of the Assignment. Unless specifically exempted, BSD will be charged on the Agreement and the Assignment based on the consideration stated in the respective instruments or the market value of the residential property, whichever is the higher.

Mortgage or charge

17. 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 BSD. The transfer of a bona fide mortgage or charge in respect of residential property from one mortgagee to another mortgagee will also not be subject to BSD. 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 BSD.

Trust arrangements

18. An agreement for sale or a conveyance on sale signed by a person in the capacity of a trustee on behalf of a HKPR is chargeable with BSD, unless

the HKPR is a mentally incapacitated person (see paragraphs 39 to 43 below for details).

Estate

19. A transfer of residential property under an estate pursuant to a will or in accordance with the law of intestacy is not chargeable with stamp duty. However, the beneficiaries of the estate may deviate from the provisions of the will or the law of intestacy and agree among themselves to redistribute the property. In some cases, the beneficiaries may even engage corporate vehicles to take up the distributed assets. Quite often such redistribution will lead to an excess distribution over some beneficiaries' entitlements under the will or the law of intestacy. Such voluntary disposition as deed of gift would be subject to stamp duty including BSD, if applicable.

Joint acquisition

20. Unless specifically exempted, BSD will be payable on the total stated consideration or market value of the property of a residential property, whichever is the higher, jointly acquired by a HKPR and a non-HKPR (whether as joint tenants or tenants-in-common), regardless of the share of interest of the non-HKPR in the acquisition of the property.

RESIDENTIAL PROPERTY

21. 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.

22. 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.

Car Parking Space

23. While BSD is chargeable on instrument for acquiring residential properties, whether a car parking space will be regarded as a part of the residential property concerned depends on the circumstances of each case. In general, if the car parking space is not separate and distinct from the residential property, the instrument for acquisition of the residential property and car parking space concerned will be chargeable with BSD by reference to the total value of the whole transaction. However, if the car parking space is a separate and independent property from the residential unit and it is not permitted to be used for residential purposes, the value of the car parking space will not be chargeable to BSD.

INSTRUMENT FOR EXCHANGE OR PARTITION OF IMMOVABLE PROPERTY

Exchange of residential properties

24. If under an instrument, a person uses his or her residential property to exchange for another residential property and any consideration is paid or given by him or her for equality, BSD will be payable on the instrument. The principle of charging stamp duty on the “equality money” in relation to a chargeable agreement for sale or conveyance on sale will apply in calculating BSD payable on such an instrument. In other words, BSD will be calculated by reference to the “equality money” payable for the exchange (subject to paragraph 26 below) and the person who pays the equality money is regarded as the purchaser or transferee. However, if that person is a HKPR acting on

his or her own behalf in acquiring the residential property, the instrument effecting the exchange will be exempt from BSD.

Scenario 5

Mr. X, a non-HKPR, owned a residential property A and Mr. Y, a HKPR, owned a residential property B. On 30 September 2013, they executed an agreement for exchange and Mr. X paid equality money of \$1M to Mr. Y.

Amount of BSD payable

BSD will be calculated by reference to the “equality money” payable for the exchange and Mr. X, the non-HKPR who paid the equality money, is regarded as the purchaser. BSD at the rate of 15% will apply and the amount of BSD payable is $\$1M \times 15\% = \$150,000$.

Scenario 6

Mr. X, a non-HKPR, owned a residential property A and Mr. Y, a HKPR, owned a residential property B. On 30 September 2013, they executed an agreement for exchange and Mr. Y paid equality money of \$1M to Mr. X.

Amount of BSD payable

The agreement for exchange is not chargeable with BSD as Mr. Y, the person who paid the equality money, is regarded as the purchaser and he is a HKPR.

25. Where the stated “equality money” under an exchange is less than the difference in the market values of the properties concerned, BSD will be charged on the difference (sections 27 and 29F of the Ordinance).

Exchange of residential property for non-residential property

26. If a person uses his or her non-residential property to exchange for a residential property (whether or not any consideration is paid or given for equality), BSD which is computed by reference to the value of the residential property will be payable on the instrument and that person, to whom the residential property is transferred, is regarded as the purchaser or transferee. Again, if that person is a HKPR acting on his or her own behalf in acquiring the residential property, the instrument effecting the exchange will be exempt from

BSD. For an exchange of residential property (“the First Exchanged Property”) for a non-residential property plus a residential property (“the Second Exchanged Property” collectively), as both the First Exchanged Property and the Second Exchanged Property form the subject matter of the exchange, the transaction will be regarded as an exchange of residential property for residential property for the BSD purposes. Therefore, the instrument of exchange will, subject to sections 27 and 29F of the Ordinance, be charged with BSD by reference to the equality money.

Scenario 7

Same as Scenario 5 but property A is a non-residential property. The market value of property B is \$8M.

Amount of BSD payable

BSD will be calculated by reference to the value of the residential property and Mr. X, the non-HKPR, is regarded as the purchaser. BSD at the rate of 15% will apply and the amount of BSD payable is $\$8M \times 15\% = \$1.2M$.

Partition of residential property

27. A partition or an agreement to partition a residential property will, subject to sections 27 and 29F of the Ordinance, as the case may be, be charged with stamp duty including BSD, if applicable, by reference to the equality money under section 25(7) or section 29C(10) of the Ordinance respectively.

Scenario 8

Mr. A and Mr. B, a non-HKPR, jointly owned a residential building comprising 3 storeys. By a deed of partition, it was agreed that Mr. A was to be assigned the first storey with value of \$5M and Mr. B was to be assigned the remaining storeys with value of \$9M. Mr. A and Mr. B are not close relatives.

Amount of BSD payable

BSD will be charged on the deed of partition which is calculated by reference to the difference in the value of the partitioned properties. Mr. B, to whom the residential properties with higher value are transferred, is regarded as the transferee and he is a non-HKPR.

The amount of BSD payable is \$2M [$\$9\text{M} - (\$5\text{M} + \$9\text{M})/2$] x 15% = \$300,000.

EXEMPTIONS AND REFUNDS

Hong Kong Permanent Resident

28. BSD is not chargeable on an agreement for sale or a conveyance on sale of any residential property when it is shown to the satisfaction of the Collector that the purchaser or transferee or each of the purchasers or transferees is a HKPR acquiring the property on his or her own behalf, that is, the person is both the legal and beneficial owner. To satisfy the Collector, the purchaser or transferee is required to submit an original statutory declaration as specified by the Collector stating that he or she is a HKPR and that he or she acquires the property on his or her own behalf. If circumstances warrant, the Collector may require the purchaser or transferee to provide further evidence, such as the source of funds for payment of consideration, to substantiate that he or she acquires the property on his or her own behalf.

29. In an acquisition of a residential property which involves provision of funds by persons other than the purchaser or transferee, resulting or constructive trust may be created. Such contribution may either be provided by way of a gift, a loan or an entrustment. The purchaser or transferee (who is in full cognizance of the facts and circumstances surrounding the contribution) is in the best position to determine the nature of such contribution and to state whether he or she acts on his or her own behalf in the acquisition.

30. The Collector accepts that for some cases (including the case where the person executing the instrument is in fact a resulting or constructive trustee), the chargeability of an instrument to BSD may not be apparent or readily ascertainable when the instrument is submitted for stamping. When the applicant makes the statutory declaration in support of his or her claim for the BSD exemption, he or she should note:

- (a) stamp duty liability in respect of an instrument has to be determined based on the circumstances existing on the date of the instrument; and

- (b) the statutory declaration must be made in respect of facts he or she honestly believes to be true at the time of such declaration.

The Collector may recover any shortfall of duty if it subsequently comes to light that the relevant conditions of the exemption were not met on the date of the instrument.

Close Relatives

31. Following the same principle of the SSD regime, transactions involving persons who are all closely related are generally exempted from BSD. Two persons are closely related if one person is the parent, spouse, child, brother or sister of the other person. If there are more than two persons, they are closely related if each of the persons is a parent, spouse, child, brother or sister of each of the other persons. For the purposes of BSD, 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 person concerned.

32. Payment of BSD is exempted if it is shown to the satisfaction of the Collector that the transaction is one of the following cases:

- (a) Acquisition of a residential property by a HKPR jointly with a close relative or close relatives who is or are not HKPR and each of the purchasers is acting on his or her own behalf.

In order to satisfy the conditions for this exemption, all the purchasers or transferees must be closely related.

- (b) Transfer of a residential property to a close relative who is not a HKPR, or to close relative(s) jointly one or more of whom is or are not HKPR and each of the transferees is acting on his or her own behalf.

Where there is more than one purchaser or transferee in a chargeable agreement for sale or a conveyance on sale, the purchasers or the transferees must also be closely related.

- (c) Nomination of a close relative(s) who is or are not HKPR of the original purchaser(s) to take up the assignment of a residential property and each of the nominees is acting on his or her own behalf. If there is more than one nominee, the nominees must also be close relatives.
- (d) Addition or deletion of name(s) of a person(s) who is or are not HKPR to or from a chargeable agreement for sale or a conveyance on sale in respect of a residential property if the person(s) is or are a close relative(s) of the original purchaser(s) and each of the persons is acting on his or her own behalf.

33. For the exemption claim on the ground of “non-HKPR close relative”, original statutory declaration must be submitted, in a form specified by the Collector, by the relevant non-HKPR purchaser or transferee declaring that he or she acquires the property on his or her own behalf.

Replacement Property

34. Notwithstanding that the purchaser or transferee under a chargeable agreement for sale or a conveyance on sale is not a HKPR, the instrument is not chargeable with BSD if it is shown to the satisfaction of the Collector that the purchaser or transferee is acting on his or her own behalf and the residential property (“replacement property”) is acquired by the purchaser or transferee to replace another residential property (“original property”) that was owned by the purchaser or transferee alone or jointly with any other person(s) and that has been:

- (a) acquired by the Urban Renewal Authority;
- (b) resumed under an order made under section 3 of the Lands Resumption Ordinance (Cap.124) or purchased under section 4A of that Ordinance;
- (c) sold pursuant to an order for sale made by the Lands Tribunal under section 4(1)(b)(i) of the Land (Compulsory Sale for Redevelopment) Ordinance (Cap.545);

- (d) resumed under an order made under section 4(1) of the Mass Transit Railway (Land Resumption and Related Provisions) Ordinance (Cap. 276);
- (e) resumed under an order made under section 13(1) of the Roads (Works, Use and Compensation) Ordinance (Cap. 370);
- (f) resumed under an order made under section 16 or 28(1) of the Railways Ordinance (Cap. 519);
- (g) acquired under an acquisition order made under section 3(1) or (2) of the Land Acquisition (Possessory Title) Ordinance (Cap. 130); or
- (h) resumed under an order made under section 37(2) of the Land Drainage Ordinance (Cap. 446).

35. If the original property was jointly owned by two or more persons, each of them may acquire a replacement property alone or jointly with the other joint owner or any of the other joint owners. Furthermore, if the purchaser or transferee acquires the replacement property jointly with any other person who was not a joint owner of the original property, exemptions also apply to the chargeable instrument as if the purchaser or transferee were a HKPR.

36. For the exemption claim on the ground of replacement property, original statutory declaration must be submitted, in the form specified by the Collector, by the non-HKPR purchaser or transferee declaring that he or she acquires the property on his or her own behalf.

Court Order

37. A chargeable agreement for sale or conveyance on sale is not chargeable with BSD if it is shown to the satisfaction of the Collector that the instrument is made pursuant to any decree or order of any court. The exemption is also available in case the conveyance is a decree or order of any court by which the residential property concerned is transferred to or vested in the transferee, which includes a foreclosure order obtained by a mortgagee whether or not it falls under the definition of a financial institution within the meaning of section 2 of the Inland Revenue Ordinance (Cap. 112). For this

purpose, “court” means any court of the Hong Kong Special Administrative Region of competent jurisdiction.

Mortgaged Property

38. A conveyance on sale is not chargeable with BSD if it is shown to the satisfaction of the Collector that under the conveyance, a mortgaged residential property is transferred to or vested in its mortgagee that is a financial institution within the meaning of section 2 of the Inland Revenue Ordinance (Cap.112), or by a receiver appointed by the mortgagee.

Mentally Incapacitated Person

39. If it is shown to the satisfaction of the Collector that any purchaser or transferee under a chargeable agreement for sale or conveyance on sale is acting in the transaction as a trustee or guardian for another person who is a HKPR and is a mentally incapacitated person, the Collector must, in determining whether the instrument is chargeable with BSD, treat the other person as a purchaser or transferee under the instrument in place of the trustee or guardian. Hence, if a residential property is acquired on behalf of a mentally incapacitated person who is a HKPR by his or her guardian or trustee, the relevant transaction will be exempted from BSD; and the beneficial owner of the residential property concerned remains to be the mentally incapacitated person. The residency status of the trustee or guardian is irrelevant as the trustee or guardian is simply acting on behalf of the mentally incapacitated person.

40. “Mentally incapacitated person” means a person who is mentally disordered or mentally handicapped within the meaning of the Mental Health Ordinance (Cap. 136) and is, because of his or her mental state, incapable of managing and administering his or her property and affairs. The Collector will require the claimant to submit documentary evidence such as a copy of court order or guardianship order pursuant to the Mental Health Ordinance (Cap. 136) to prove that the beneficiary is incapable, by reason of mental incapacity, of managing and administering his property and affairs.

41. For “trustee” and “guardian”, the Collector will adopt the ordinary meaning and accepts “trustee” as one who stands in a fiduciary or confidential relation to another, especially one who, having legal title to property, holds it in trust for the benefit of another and owes a fiduciary duty to that beneficiary and

“guardian” as one who has the legal authority and duty to care for another person or property, especially because of the other’s infancy, incapacity, or disability.

42. A purchaser or transferee who claims to be a trustee acting on behalf of a HKPR who is a mentally incapacitated person is required to provide documentary evidence such as a valid and legally binding trust instrument. Depending on the actual circumstances, the Collector may request the claimant to produce further evidence, such as source of funds to acquire the property and certified documents showing the relationship between the trustee and the mentally incapacitated person. In the case of guardianship, the Collector may require documentary evidence to prove the legal authority of the claimant as the guardian of the mentally incapacitated person, such as the guardianship order granted by court or the Guardianship Board.

43. In determining whether the agreement or conveyance is chargeable with BSD, the Collector will treat the mentally incapacitated person as purchaser or transferee in place of the trustee or guardian. As a corollary, the Collector will treat a mentally incapacitated person who is a HKPR as a vendor or transferor in place of the trustee or guardian if the vendor or transferor is acting in the transaction as a trustee or guardian for the mentally incapacitated person.

Gift to charitable institution

44. A conveyance to effect a gift of residential property to charitable institution or trust of a public character is exempted from BSD in accordance with section 44 of the Ordinance if the charitable institution or trust of a public character is exempted from tax under section 88 of the Inland Revenue Ordinance (Cap. 112).

Associated bodies corporate

45. If it is shown to the satisfaction of the Collector that a chargeable agreement for sale or conveyance on sale is executed to transfer a residential property from one associated body corporate (within the meaning of section 45(2) of the Ordinance) to another associated body corporate, the agreement for sale or the conveyance on sale is exempted from BSD in accordance with section 45 of the Ordinance.

Refund for redevelopment

46. Unless specifically exempted, BSD is payable on an instrument for acquisition of residential property for redevelopment. A person who has paid BSD in respect of an instrument effecting the acquisition of a residential property for redevelopment may apply for a refund of the BSD paid if the specified conditions are met. The refund mechanism for redevelopment project is premised on two major principles, that is, the developer concerned has obtained ownership of the entire lot to be redeveloped and has proved to the satisfaction of the Collector that he will use the site for redevelopment purpose.

47. Upon application, the Collector may refund the BSD paid by the applicant for the acquisition of a residential property which consisted, or formed part, of a lot (“the lot”) and the applicant alone or jointly with an associated body corporate became the owner of the lot and the conditions specified in paragraph 48 below are satisfied. In some cases, the lot (wholly or partly and whether or not together with any other lot) may be surrendered to the Government; acquired by the Government under section 4A of the Lands Resumption Ordinance (Cap. 124) or resumed by the Government under an order made under section 3 of that Ordinance and the owner be granted a new lot (“the new lot”) for redevelopment. The applicant can still claim refund of the BSD paid if the conditions specified in paragraph 48 below are satisfied.

48. The conditions required for the refund of BSD mentioned in paragraph 47 above are that the applicant, alone or jointly with the associated body corporate:

- (a) has obtained from the Building Authority under the Buildings Ordinance (Cap. 123), the consent to commence any foundation work for the lot or the new lot (whether or not together with any other lot); or
- (b) has-
 - (i) demolished all buildings (if any) existing on the lot or the new lot, other than a building the demolition of which is prohibited under any Ordinance; and

- (ii) obtained the approval of the Building Authority in respect of the general building plan for the building works to be carried out on the lot or the new lot (whether or not together with any other lot).

49. In relation to a lot that has been divided into undivided shares, a person does not become the owner of the lot until the person is the legal owner of all the undivided shares in the lot. "Lot" has the meaning given by section 2(1) of the Land (Compulsory Sale for Redevelopment) Ordinance (Cap. 545) which:

(a) means-

- (i) any piece or parcel of ground the subject of a Government lease;
- (ii) a section which by virtue of section 8(3) or 27(2) of the Government Rent and Premium (Apportionment) Ordinance (Cap. 125) is deemed to be a lot for the purposes of that Ordinance;

(b) includes a section and subsection of a lot.

50. If the residential property was subsequently transferred by a person (which is a body corporate) to an associated body corporate, the latter may also, subject to the conditions set out in paragraphs 47 and 48 above, apply for a refund of BSD paid by the former. On the other hand, if the developer acquires residential properties for redevelopment from a third party vendor, the developer cannot claim refund of BSD paid by the vendor in the acquisition of the residential properties concerned. That said, the developer can still apply for refund of BSD it has paid for acquiring the residential properties being redeveloped in accordance with the mechanism explained above.

51. In respect of various residential properties acquired separately by several companies for joint development, the companies, being the joint owners of the lot, may respectively claim for a refund of BSD they separately paid at the time they acquired the various residential properties if the conditions specified in paragraphs 47 and 48 above are met.

52. The refund mechanism does not cover acquisition of residential property for refurbishment or renovation. Where a non-HKPR acquires a

residential property and then carries out renovation or refurbishment works, BSD will be imposed on the chargeable agreement for sale or the conveyance on sale, as the case may be.

LIABLE PERSON

53. Only the purchaser or transferee of a chargeable agreement for sale or conveyance on sale is liable to pay BSD. It follows that persons merely using the instrument will not be liable to pay BSD.

ADMISSIBILITY OF INSTRUMENT

54. By virtue of section 15 of the Ordinance, instruments not duly stamped are generally not admissible in proceedings other than criminal proceedings and civil proceedings initiated by the Collector to recover stamp duty and penalty. Having regard that innocent parties' right to present the relevant documentation in court proceedings should not be affected by the buyer's failure to pay the BSD, an instrument may be received in evidence in civil proceedings before a court even if it is not duly stamped with the BSD if the instrument is produced in evidence by a person who is not the purchaser or transferee under the instrument.

TIME FOR PAYMENT

55. Head 1(1C) in the First Schedule to the Ordinance stipulates that a chargeable agreement for sale is to be stamped with BSD at the same time as that for AVD and SSD, that is, in general, within 30 days from the date of the agreement for sale is entered into. Likewise, head 1(1AAB) in the First Schedule to the Ordinance requires a conveyance on sale to be stamped with BSD at the same time as that for AVD and SSD, that is, within 30 days from the date on which the conveyance is executed.

56. Section 70 of the Ordinance provides that if the time for stamping any instrument chargeable with BSD begins before the day on which the Amendment Ordinance was published in the Gazette, i.e. 28 February 2014

(“the Date of Gazette”), the time for stamping is to be replaced by a period of 30 days commencing immediately after that day. Hence, in respect of any agreement for sale or conveyance on sale chargeable with BSD which was executed between 27 October 2012 (the date from which BSD became effective) and before the Date of Gazette and had already been stamped with other stamp duty, the applicable BSD has to be paid within 30 days from 28 February 2014 (that is, on or before 31 March 2014 as 30 March 2014 is a Sunday).

FURTHER BSD

57. 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 BSD) will subsequently be charged on the market value of the property.

ADJUDICATION AND APPEAL

58. There are no provisions in the Ordinance allowing the exemption of BSD on the ground of financial hardship or the personal circumstances of the duty payers. However, a duty payer may appeal against BSD payable on an instrument on the grounds that (i) the instrument is not chargeable with BSD; and/or (ii) the amount of BSD 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 issues an assessment to express his opinion on the two 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 BSD

59. Same as that for AVD and SSD, 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 application for refund of BSD can be made by the person who paid BSD 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

60. If a chargeable agreement for sale is not stamped with BSD 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 BSD and the applicable penalty are recoverable by the Collector as a civil debt from the liable party. Besides, any unstamped chargeable agreement for sale or conveyance cannot be registered at the Land Registry and therefore the purchaser or transferee cannot obtain the legal benefits associated with the registration.

61. Under section 9(2) of the Ordinance, the Collector may remit the whole or part of the penalty for late stamping. While the remission of penalty is discretionary and should be considered on the basis of the circumstances of each case, the Collector has promulgated general guidelines on the Government's website that in a voluntary disclosure case where the delay is not deliberate, the Collector will normally impose the penalty at a reduced rate of 14% with reference to the period of delay, subject to a minimum amount of \$500. For a second or subsequent delay uncovered, the penalty imposed will be severer.

FAQs

62. 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 Buyer's Stamp Duty**

Example 1 (A non-HKPR acquires a residential property on or after 27 October 2012)

Mr. Chan, a non-HKPR, signed a provisional agreement for sale and purchase to acquire a residential property on 1 November 2012 at a price of \$3M. The formal agreement for sale was signed on 15 November 2012. Will Mr. Chan be liable to pay BSD?

Since the residential property was acquired by Mr. Chan, a non-HKPR, on or after 27 October 2012, he has to pay BSD for the transaction and the BSD payable is \$450,000 (\$3M x 15%).

Example 2 (A non-HKPR acquires a residential property before 27 October 2012)

Mr. Chan, a non-HKPR, signed a provisional agreement for sale and purchase to acquire a residential property on 15 October 2012 but the formal agreement for sale was signed on 15 November 2012. Will Mr. Chan be liable to pay BSD?

Since the residential property was acquired by Mr. Chan before 27 October 2012, the transaction is not subject to BSD.

Example 3 (A HKPR acquires a residential property jointly with his/her close relative who is a non-HKPR on or after 27 October 2012)

Mr. Lee, a HKPR, and his spouse Ms. Cheung jointly purchased a residential property on 1 November 2012 at a price of \$4M. Ms. Cheung is not a HKPR. Is the transaction chargeable with BSD?

Acquisition of residential properties by a HKPR jointly with his or her close relatives (that is, spouse, parents, children, brothers and sisters) is not chargeable with BSD. Mr. Lee and Ms. Cheung are not required to pay BSD for the transaction.

Example 4 (A HKPR acquires a residential property on or after 27 October 2012 jointly with a non-HKPR who is not a close relative of the HKPR)

Mr. Wong and Mr. Ho jointly purchased a residential property on 1 November 2012 at a price of \$4M. Mr. Wong is a HKPR whereas Mr. Ho is not. They are not close relatives (that is, spouse, parents, children, brothers and sisters). What is the amount of BSD payable?

If a residential property is acquired by a HKPR and a non-HKPR jointly as joint tenants or tenants-in-common and they are not close relatives, the BSD rate will apply on the stated consideration or full value of the property, whichever is the higher, regardless of the non-HKPR's share in the property. In the present case, the amount of BSD payable is \$600,000 (that is, \$4M x 15%).

Example 5 (Addition of a non-HKPR in the agreement for sale and purchase)

Mr. Lee who is a HKPR entered into a provisional agreement for sale and purchase on 1 November 2012 to acquire a residential property at a price of \$5M. On 30 November 2012, Ms. Cheung was added in the formal agreement for sale and purchase as one of the joint tenants. Ms. Cheung is neither a HKPR nor a close relative of Mr. Lee. Will Mr. Lee and Ms. Cheung be liable to pay BSD? What is the amount of BSD payable?

In the above situation, Ms Cheung has acquired part of the property from Mr. Lee. As Ms. Cheung is not a close relative of Mr. Lee, there will be no exemption of BSD. They are liable to pay BSD on the full amount of the consideration or the value of the property, whichever is the higher. The amount of BSD payable is \$750,000 (that is, \$5M x 15%).

Example 6 (Addition of a non-HKPR in the assignment)

Mr. Lee who is a HKPR entered into an agreement for sale and purchase on 1 November 2012 to acquire a residential property at a price of \$5M. On 30 November 2012, Ms. Cheung was added in the assignment as one of the joint tenants. Ms. Cheung is neither a HKPR nor a close relative of Mr. Lee. Will Mr. Lee and Ms. Cheung be liable to pay BSD? What is the amount of BSD payable?

In the above situation, Ms Cheung has acquired part of the property from Mr. Lee. As Ms. Cheung is not a close relative of Mr. Lee, there will be no exemption of BSD. They are liable to pay BSD on the full amount of the consideration or the value of the property, whichever is the higher. The amount of BSD payable is \$750,000 (that is, \$5M x 15%)