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To: Stamp Office Customers

STAMP OFFICE
Stamping Circular No. 03/2010
Exchange Participant: Stamp duty on transfer of shares

The purpose of this Stamping Circular aims at reminding the Exchange Participants of the proper calculation and collection of stamp duty before effecting any transfer of listed shares for their clients.

2. Examination of the books and records during inspection of Exchange Participants reveals that the amount of stamp duty has not been properly calculated and collected in many different cases. Please refer to the Appendix of this circular the proper way of calculating the amount of stamp duty in examples where irregularities were commonly located. The calculations shown therein are made on the basis that the instruments are duly stamped within the stipulated time for stamping. In case of late stamping, penalty will be demanded.

3. If you have any question in connection with this circular or the example in the Appendix, please email us at taxsdo@ird.gov.hk or contact us at 2594 3233.

Stamp Office
June 2010

cc: The Stock Exchange of Hong Kong Ltd

Examples for calculation of stamp duty on transfer of shares

Stamp duty should be payable upon a change of beneficial interests in the Hong Kong stock. The following examples demonstrate the proper way of calculating the amount of stamp duty payable in different scenarios of transfer of shares.

Example 1: Gift of shares

Mr. A, Mrs. A and their son were each allotted with 1,000 shares of X Company in the Initial Public Offering. Mrs. A and the son transferred their shares to Mr. A at nil consideration on 2 January 2010. Mr. A deposited the above 3 share certificates to his securities account with the stockbroker on the same day of which the last closing price of X Company per share was $8. On 3 January 2010, Mr. A through the stockbroker sold an aggregate of 3,000 shares of X Company at $10 per share on the Stock Exchange.

Stamp Duty

(a) Instrument of Transfer (from Mrs. A to Mr. A on 2.1.2010)
($8 x 1,000 x 0.2%) + $5 = $21

(b) Instrument of Transfer (from the son to Mr. A on 2.1.2010)
($8 x 1,000 x 0.2%) + $5 = $21

(c) Sold note (from Mr. A on 3.1.2010)
$10 x 3,000 x 0.1% = $30
Instrument of Transfer (if applicable)
$5 fixed duty per each instrument

Reason: Gift of shares from both Mrs. A and the son to Mr. A involved a change of beneficial interests in the shares of X Company, a Hong Kong stock, and therefore both are chargeable to stamp duty. The last closing price as at the date of transfer will be adopted as the value of the shares for calculation of stamp duty. The subsequent sale of 3,000 shares of X Company by Mr. A is a sale of Hong Kong stock and therefore chargeable to stamp duty.

Example 2: Transfer of shares between accounts

Mr. A maintained with his stockbroker an account in his name as well as a joint name account with his spouse. Mr. A instructed the stockbroker to transfer 1,000 shares of X Company from his sole name account to the joint name account. As at the date of transfer, the last closing price of X Company was $50 per share.

Stamp Duty

Instrument of Transfer (from Mr. A to Mrs. A and Mr. A)

($50 x 1,000 x 0.2% x 1/2) + $5 = $55

Reason: Transfer of shares from Mr. A's sole name account to his joint name account is operating as a voluntary disposition inter vivos (i.e. gift) and thus chargeable to stamp duty. The last closing price as at the date of transfer will be adopted as value of shares for calculation of stamp duty.

The same principle applies to the transfer of the shares from one's account to another person's account including but not limiting to his relatives or a company of which he is the major shareholder. It is clear that the transfer involves a change of beneficial interest and therefore is chargeable to stamp duty.

Example 3: Transfer of shares from one associated body corporate to another without applying for the Intra Group Relief under section 45 of Stamp Duty Ordinance.

ABC Company instructed the stockbroker to transfer 2,000 shares of X Company to its wholly-owned subsidiary M&M Company at nil consideration on 4 January 2010. As at the date of transfer, the last closing price of X Company was $70 per share. Neither ABC Company nor M&M Company had applied to the Stamp Office for intra group relief under section 45 of Stamp Duty Ordinance.

Stamp Duty

Instrument of Transfer (from ABC Company and M&M Company on 4 January 2010)

($70 x 2,000 x 0.2%) + $5 = $285

Reason: Notwithstanding that the two companies might be eligible for the intra group relief under section 45 of the Stamp Duty Ordinance, Exchange Participant should collect stamp duty on the transfer as the case had not been submitted to Stamp Office for adjudication. The last closing price as at the date of transfer will be adopted as value of shares and used for calculation of stamp duty.

Example 4: Transfer of shares from one client's account to another to settle the transaction

The stockbroker effected a sale of 1,000 shares of X Company on 5 January 2010 for his client Mr. A. On 7 January, Mr. A was unable to deliver the stock for settlement. Mr. A borrowed the stock from Mr. B through the stockbroker for settlement. On 8 January 2010, the stockbroker on behalf of Mr. A acquired 1,000 shares of X Company from the market and returned the stock to Mr. B on the same day. The Stock Borrowing and Lending Agreements between (1) Mr. A and the stockbroker and (2) Mr. B and the stockbroker have not been registered with the Collector before the expiry of 30 days after the stock borrowing was effected. The last closing price of X Company on 5 January 2010, 7 January 2010 and 8 January 2010 was $80, $82 and $75 respectively.

Stamp Duty

(a) Sold note (Mr. A’s sale of 1,000 shares on 5 January 2010)

$80 x 1,000 x 0.1% = $80

(b) Contract Note (stock borrowed from Mr. B to Mr. A on 7 January 2010)

$82 x 1,000 x 0.1% x 2 = $82 x 2=$164

(c) Bought note (Mr. A’s purchase of 1,000 shares on 8 January 2010)

$75 x 1,000 x 0.1% = $75

(d) Contract Note (stock returned from Mr. A to Mr. B on 8 January 2010)

$75 x 1,000 x 0.1% x 2 = $75 x 2 = $150

Reason: Transfer of shares from one client to another for the purpose of settlement is regarded as a sale and purchase and chargeable to stamp duty. By the same token, the subsequent return of stock is also regarded as another sale and purchase and chargeable to stamp duty. The last closing price of the shares as at the date of transfer will be adopted as value of shares for calculation of stamp duty.

Even if in some situation where the stockbroker used his stock from the house account or borrowed stock for settlement, the transfer of stock (i.e. the stock lending and the subsequent stock return) is still regarded as sale and purchase and chargeable to stamp duty. However, the stock borrowing and lending transactions might be qualified for stamp duty relief if the Stock Borrowing and Lending Agreements between (1) the stockbroker and Mr A and (2) the stockbroker and Mr. B respectively have been duly registered with the Stamp Office and the transactions met the requirements as stipulated under section 19(12) and 19(12A) of the SDO. For details on Stock Borrowing and Lending, please refer to Stamp Office Interpretation and Practice Notes No. 2.

Example 5: Error Trade in which documentary evidence is not available.

A genuine error trade will not trigger a change of beneficial interest in stock and thus not subject to stamp duty. However, stockbroker should keep sufficient documentary evidence, including but not limiting to the client’s original instruction/order record, error trade report, contract cancellation & replacement report, amendment form, etc to substantiate the error. In the absence of sufficient documentary evidence to substantiate that the transaction is an error trade, a transfer from one account to another will prima facie be considered as a change of beneficial interest chargeable to stamp duty. The last closing price as at the date of transfer will be adopted for calculation of stamp duty.

Time to pay the stamp duty

For trade effected in Hong Kong, Exchange Participants should pay the stamp duty within two days after effecting the transaction. Heavy penalty will be imposed for late payment of stamp duty.