



INLAND REVENUE DEPARTMENT, STAMP OFFICE
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KAI TAK, KOWLOON, HONG KONG.
Web Site: www.ird.gov.hk

STAMPING PROCEDURES AND EXPLANATORY NOTES

Chargeable Agreement for Sale Variation of Consideration prior to Assignment

Background

From time to time, the Stamp Office receives enquiries from property purchasers on cases where after the execution of an agreement for sale, due to a change in the payment method, a supplemental agreement with the vendor is executed to revise the payment terms and the stated consideration of the original agreement. Their questions are whether the stamp duty is to be computed on the original or the revised consideration in such cases. The purpose of this leaflet is to set out the interpretation and current practice of the Stamp Office on this matter for ease of reference.

2. The following practice applies to cases where the change in price is due to variation of the terms of the agreement agreed on an arm's length basis. It does not apply to changes made for the purposes of stamp duty avoidance. Attention is also drawn to section 11 of the Stamp Duty Ordinance, Cap. 117 ("the Ordinance") which provides that all the facts and circumstances affecting the liability of any instrument to stamp duty are to be fully and truly set forth thereon, and that any person who contravenes the relevant provisions with intent to defraud the Government commits an offence.

Our Practice

3. Prior to completion of the transaction, the parties to an agreement for sale may vary the consideration or other terms. Section 29C(7) of the Ordinance stipulates that where a chargeable agreement for sale consists of 2 or more instruments (consists of a principal instrument and supplemental agreement(s)), the principal instrument only shall be chargeable with stamp duty and the other instrument(s) shall not be chargeable with stamp duty. In assessing the amount of stamp duty payable on the principal instrument, the Stamp Office will take into account all the facts available *at the time of stamping*.

(a) Stamping after Variation of Consideration

Chargeable agreements for sale should be submitted for stamping within 30 days¹ after execution. So long as the agreement for sale is not yet stamped (e.g. the time for stamping has not expired²), in assessing stamp duty of the principal instrument, the terms of all supplemental instruments have to be taken into account. Thus, where the principal instrument is presented together with the supplemental instrument for stamping, the final revised consideration provided in the supplemental instrument will be used to compute the amount of stamp duty chargeable on the principal instrument.

(b) Stamping before Variation of Consideration

If an agreement for sale is already stamped according to the consideration stated, any subsequent supplemental agreement shall **not** affect the stamp duty previously assessed. There is no provision in the Ordinance for a refund of stamp duty due to a subsequent reduction of the consideration. Correspondingly, if the agreement for sale is stamped and there is a subsequent increase in price prior to assignment, the Collector will not demand further stamp duty unless section 29F(1) and (3)³ of the Ordinance applies.

Enquiry

4. For enquiries, please contact the Stamp Office by telephone or in writing as follows: -
- | | |
|-------------------|---|
| Telephone number: | 2594 3202 |
| Fax number: | 2519 9025 |
| Address: | 1/F., Inland Revenue Centre, 5 Concorde Road,
Kai Tak, Kowloon, H.K. |

Note: These notes have no binding force and do not affect a person's right of appeal to the Court.

¹ If an agreement for sale is superseded, within the first 14 days of the time for stamping, by another agreement for sale made between the same parties and on the same terms, the time for stamping the second agreement is not later than 30 days after the date of its execution.

² Subject to specified conditions, a person may, before the repeal of subsections (11) to (13) of section 29C of the Ordinance with effect from 30 June 2011, apply to the Collector for deferring payment of stamp duty. Hence, deferment of payment of stamp duty is only applicable to cases endorsed by the Collector before the repeal of the subsections.

³ Under section 29F(1) and (3) of the Ordinance, if the agreement for sale confers a substantial benefit on the purchaser by reason of the inadequacy of the consideration or other circumstances, stamp duty will be chargeable on the value of the immovable property instead of the stated consideration.

STAMP OFFICE
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