



INLAND REVENUE DEPARTMENT, STAMP OFFICE
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WAN CHAI, HONG KONG.
Web Site: www.ird.gov.hk

STAMPING PROCEDURES AND EXPLANATORY NOTES

Chargeable Agreement for Sale of Residential Properties Variation of Consideration prior to Assignment

Background

In recent years, there were cases where the stated consideration of an agreement for sale of a residential property was revised by a supplemental agreement before assignment. The revision was mainly triggered by an adjustment of the terms of the original agreement, in particular, a change in the payment method. From time to time, the Stamp Office receives enquiries from the public on whether the stamp duty is to be computed on the original or the revised consideration in such cases.

2. The purpose of this leaflet is to set out the current interpretation and practice of the Stamp Office on this matter for ease of reference. 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 purpose 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 with an intent to defraud the Government commits an offence.

Previous Practice

3. In the past, the Stamp Office took the view that the amount of stamp duty payable on a chargeable agreement for sale was computed by reference to the stated consideration of the *first* agreement of the transaction unless section 29F(1)&(3)¹ of the Ordinance apply.

¹ Under Section 29F(1)&(3) of the Stamp Duty Ordinance (Cap. 117), 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.

Current Practice

4. With the benefits of subsequent legal advices, the Stamp Office revised its practice since August 2001. The current practice is to take into account all the facts available *at the time of stamping* when computing the amount of stamp duty payable on an instrument.

(a) Principal & Supplemental Instruments

A chargeable agreement for sale can consist of various instruments including a principal instrument and supplemental instrument(s)². When 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 revised consideration provided in the supplemental instrument will be used to compute the amount of stamp duty payable.

(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)&(3)¹ of the Ordinance apply.

(c) Stamping after Variation of Consideration

All chargeable agreements should be submitted for stamping within 30 days after execution. However, subject to certain conditions, a person can apply to defer

² Section 29A(3) [ibid.] states that an agreement for sale may consist of 2 or more instruments. Section 29C(7) [ibid.] stipulates that where a chargeable agreement for sale consists of 2 or more instruments, the principal instrument only shall be chargeable with stamp duty and the other instruments shall not be chargeable with stamp duty.

payment of stamp duty until the assignment is executed or the property is resold [section 29C(11)&(12) of the Ordinance]. Prior to completion of the transaction, the parties to an agreement for sale may vary the consideration or other terms. So long as the agreement for sale is not yet stamped (e.g. deferment of stamp duty is endorsed by the Collector under section 29C(13)(a) of the Ordinance or the time for stamping has not expired), the Stamp Office will use the final revised price as at the time of stamping to assess the stamp duty payable on the principal instrument.

Enquiry

5. For enquiries, please contact the Stamp Office by telephone or in writing as follows:

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Telephone number: 2594 3202

Fax number: 2519 9025

Address: 3/F., Revenue Tower, 5 Gloucester Road, Wanchai,

H.K.

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

STAMP OFFICE

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