



Circular

Circular No. 14-02 (CR)

Special Stamp Duty

- The disposal (which includes a resale or transfer) of a residential property within 24 months (if it was acquired between 20 November 2010 and 26 October 2012) or 36 months (if it was acquired on or after 27 October 2012) will be subject to a special stamp duty.
- Licensees should bring to the attention of their clients before entering into any PASP that the sale of the property will be subject to a special stamp duty if it can be ascertained from the land search and/or the vendor that the property was acquired by him/her between 20 November 2010 and 26 October 2012 and its sale under the PASP is within 24 months from the date of acquisition, or on or after 27 October 2012 and its sale under the PASP is within 36 months from the date of acquisition.
- Licensees should advise their clients to agree on which party shall pay the special stamp duty and specify in the PASP their agreement.

Buyer's Stamp Duty

- A chargeable agreement for sale or conveyance on sale for acquisition of a residential property executed on or after 27 October 2012 will be subject to a buyer's stamp duty, except where the purchaser is a Hong Kong permanent resident ("HKPR") acquiring the property on his/her own behalf.
- Licensees should bring to the attention of their purchaser clients before entering into any PASP that the purchase of the property will be subject to a buyer's stamp duty, unless he/she is a HKPR acquiring the property on his/her own behalf.

Special Stamp Duty and Buyer's Stamp Duty

The Stamp Duty (Amendment) Ordinance 2014 ("SDAO"), deemed to have come into operation on 27 October 2012, was gazetted on 28 February 2014. The SDAO amended the Stamp Duty Ordinance

(Cap. 117) (“SDO”) to adjust the rates and extend the holding period in respect of the special stamp duty (“SSD”), and to impose a buyer’s stamp duty (“BSD”) on certain residential property transactions with effect from 27 October 2012.

Licenses are reminded to take note of the changes brought by the SDAO to the SDO, and they should pay attention to the following when handling the sale and purchase of residential properties:

1. **SSD**

Circumstances under which the SSD is payable

- (a) Unless the transaction is exempted from the SSD, the liability to pay the SSD will arise if –
- (i) there is a sale and purchase or transfer of a residential property;
 - (ii) the property is acquired by the vendor or transferor on or after 20 November 2010; and
 - (iii) the property is disposed of by the vendor or transferor within 24 months (when the property was acquired between 20 November 2010 and 26 October 2012) or 36 months (when the property was acquired on or after 27 October 2012) from the date of acquisition.
- (b) For SSD purposes, the date of a chargeable agreement for sale is the date a person “acquires” or “disposes of” a property, and it includes both a provisional agreement for sale and purchase (“PASP”) and an agreement for sale and purchase. Where there is more than one chargeable agreement for sale in a transaction, the date of the first agreement will be taken as the date of acquisition or disposal of a property. If there is no chargeable agreement for sale, the date of conveyance will be the date of acquisition and disposal.

- (c) Licensees should bring to the attention of their clients before entering into any PASP that the sale of the property concerned will be subject to payment of the SSD if it can be ascertained from the land search of the property and/or the vendor that the property was acquired by the vendor between 20 November 2010 and 26 October 2012 and its sale under the PASP is within 24 months from the date of acquisition, or on or after 27 October 2012 and its sale under the PASP is within 36 months from the date of acquisition.

Calculation and rates of SSD

- (d) The SSD payment is based on the amount of the consideration for the transaction or the market value of the property, whichever is the higher, at the following regressive rates within the following periods beginning on the date of acquisition –

Date of disposal	Rate for properties acquired between 20 November 2010 and 26 October 2012	Rate for properties acquired on or after 27 October 2012
Within a period of 6 months	15%	20%
After expiry of a period of 6 months but within a period of 12 months	10%	15%
After expiry of a period of 12 months but within a period of 24 months	5%	10%
After expiry of a period of 24 months but within a period of 36 months	--	10%

Liability for payment of SSD

- (e) As both vendor and purchaser are jointly and severally liable for payment of the SSD, licensees should advise their clients to agree on which party (i.e. the vendor or the purchaser) should pay the SSD and specify in the PASP their agreement. If it is agreed that the SSD (or any part thereof, as the case may be) should be paid by the vendor, licensees should further advise their clients to specify the necessary arrangements in the PASP (such as having the purchaser's solicitor withhold part of the purchase price for payment of the SSD). Licensees should also invite their clients to seek legal advice on their liability for payment of the SSD, if necessary, before proceeding with the execution of the PASP.

2. BSD

Circumstances under which the BSD is payable

- (a) Unless specifically exempted, BSD is payable on a chargeable agreement for sale or conveyance on sale for the acquisition of a residential property if the agreement for sale or conveyance on sale is executed on or after 27 October 2012, except where the purchaser or transferee is a Hong Kong permanent resident¹ ("HKPR") acquiring the property on his/her own behalf².

BSD rate and liability for payment of BSD

- (b) For BSD purposes, a PASP is also a chargeable agreement for sale. BSD is charged at the rate of 15% on the stated

¹ See section 29A(1) of the SDO for the meaning of a HKPR. For BSD purposes, HKPRs include holders of valid permanent identity cards, and also the aged, the blind and the infirm who are not required to apply for an identity card under regulation 25(e) of the Registration of Persons Regulations (Cap. 177A) and are entitled to be issued a permanent identity card if they make an application for a permanent identity card.

² i.e. the person is both the legal and beneficial owner.

consideration or market value of the property, whichever is the higher.

- (c) The purchaser or transferee of a property is liable to pay the BSD. A limited company, irrespective of whether its shareholder(s) or director(s) is/are HKPR or otherwise, is liable to pay the BSD if it acquires a residential property on or after 27 October 2012.
- (d) Licensees should bring to the attention of their purchaser clients before entering into any PASP that the purchase of the property concerned will be subject to payment of a BSD, unless he/she is a HKPR acquiring the property on his/her own behalf. Licensees should also invite their purchaser clients to seek legal advice on their liability for payment of the BSD, if necessary, before proceeding with the execution of the PASP.

Licensees are strongly advised to refer to the *Stamp Office Interpretation and Practice Notes No. 5 (Revised), Q & A for SSD & BSD* and *Illustrative examples of the application and computation of SSD & BSD* available at the website of the Inland Revenue Department at www.ird.gov.hk/eng/pdf/e_soipn05.pdf, www.ird.gov.hk/eng/faq/ssd.htm, www.ird.gov.hk/eng/faq/bsd.htm, www.ird.gov.hk/eng/faq/ssdexample.htm and www.ird.gov.hk/eng/faq/bsdexample.htm respectively, for more details regarding the SSD and the BSD.

Licensees who fail to observe the guidelines set out in this Circular may be subject to disciplinary action by the Estate Agents Authority.

This Circular supersedes Circular No. 11-03 (CR).

May 2014

Holders of Statements of Particulars of Business
 should bring this Circular to the attention of all staff
 engaged in estate agency work