



Circular

Circular No. 14-03 (CR)

- **Bring to the attention of clients before they enter into any PASP that the sale and purchase of the property will be subject to the ad valorem stamp duty (“AVD”) at a higher rate unless specifically exempted or otherwise provided, such as in the case of a residential property transaction, the purchaser or transferee is a Hong Kong Permanent Resident acting on his/her own behalf and he/she does not own any other residential property in Hong Kong at the time the PASP is entered into.**
- **Invite clients to seek legal advice on their liability for payment of the AVD, if necessary, before they enter into any PASP.**

Adjustments to Ad Valorem Stamp Duty

The Stamp Duty (Amendment) (No. 2) Ordinance 2014 (“SDAO2”), deemed to have come into operation on 23 February 2013, was gazetted on 25 July 2014. The SDAO2 amended the Stamp Duty Ordinance (Cap. 117) (“SDO”) to provide for payment of the *ad valorem* stamp duty (“AVD”) at higher rates (“Scale 1”) on both residential and non-residential properties acquired on or after 23 February 2013, and to advance the timing for charging AVD on non-residential property transactions from conveyance on sale to the agreement for sale executed on or after that date.

2. Licensees are reminded to take note of the changes brought by the SDAO2 to the SDO, and to pay attention to the following when handling the sale and purchase of properties:

Circumstances under which the AVD at Scale 1 is payable

- (a) Unless specifically exempted or otherwise provided, the AVD at Scale 1 is payable on an agreement for sale for the

acquisition of any residential property or non-residential property, if the agreement is executed on or after 23 February 2013. It also applies to a conveyance on sale of such a property executed on or after that date (unless the related agreement for sale was executed before 23 February 2013).

- (b) However, the AVD at Scale 1 does not apply to an agreement for sale or conveyance on sale for a residential property where the purchaser or transferee is a Hong Kong permanent resident¹ (“HKPR”) acting on his own behalf and does not own any other residential property in Hong Kong at the time of acquisition of the property concerned. In such a case, the lower AVD rates, referred to as Scale 2 rates in the SDAO2, apply to such agreement or conveyance.
- (c) For stamp duty purposes, a provisional agreement for sale and purchase (“PASP”) is a chargeable agreement for sale.
- (d) Licensees should bring to the attention of their clients before their clients enter into any PASP that the sale and purchase of the property concerned (whether it is a residential or non-residential property) is subject to the AVD at Scale 1 unless specifically exempted or otherwise provided, such as in the case of a residential property transaction, the purchaser or transferee is a HKPR acting on his/her own behalf and he/she does not own any other residential property in Hong Kong at the time the PASP is entered into.

¹ See section 29A(1) of the SDO for the meaning of a HKPR. For the purposes of AVD, 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.

Calculation and rates of AVD at Scale 1

- (e) The payment of AVD at Scale 1 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 rates (including the marginal relief) -

Consideration or market value of the property (whichever is the higher)	AVD rates at Scale 1
Up to \$2,000,000	1.50%
\$2,000,001 to \$2,176,470	\$30,000+20% of the excess over \$2,000,000
\$2,176,471 to \$3,000,000	3.00%
\$3,000,001 to \$3,290,330	\$90,000+20% of the excess over \$3,000,000
\$3,290,331 to \$4,000,000	4.50%
\$4,000,001 to \$4,428,580	\$180,000+20% of the excess over \$4,000,000
\$4,428,581 to \$6,000,000	6.00%
\$6,000,001 to \$6,720,000	\$360,000+20% of the excess over \$6,000,000
\$6,720,001 to \$20,000,000	7.50%
\$20,000,001 to \$21,739,130	\$1,500,000+20% of the excess over \$20,000,000
\$21,739,131 and above	8.50%

Liability for payment of AVD

- (f) Both the vendor and purchaser are jointly and severally liable for payment of the AVD, irrespective of whether it is calculated at Scale 1 rates or Scale 2 rates. Licensees should advise their clients to agree on which party (i.e. the vendor or the purchaser) is responsible for paying the AVD, and specify in the PASP their agreement. Licensees should also invite their clients to seek legal advice on their liability for payment of the AVD, if necessary, before they enter into any PASP.

Licensees are strongly advised to refer to the *Q & A for ad valorem stamp duty (AVD)* and *Illustrative examples of the application and computation of AVD* available at the website of the Inland Revenue Department at www.ird.gov.hk/eng/faq/avd.htm and www.ird.gov.hk/eng/faq/avdexample.htm respectively, for more details regarding the increase of the AVD.

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

October 2014

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