



Circular

Circular No. 99-04(CR)

30 April 1999

New Measures on Stamp Duty

In the Budget of the HKSAR for the year 1999-2000, there are proposals in regard of the stamping of instruments for landed property transactions. These proposals have become effective since 1 April 1999.

Besides the revision of stamp duty rates, the new measures include **Deferring Payment of Stamp Duty on Chargeable Agreements** and **Exemption to Uncompleted Agreements**. Practitioners should pay special attention to these two new measures.

Practitioners are advised to familiarize themselves with the new measures when providing services to their clients in property sales. *New Measures in Relation to the Stamp Duty on Property Transactions and Current Rates of Stamp Duty* issued by the Stamp Office are attached for reference.

This Circular should be made available for the
information of all staff engaged in estate agency work.



STAMP DUTY

New Measures in Relation to the Stamp Duty on Property Transactions

Introduction

The Budget for the year 1999-2000 has made some proposals in relation to the stamping of instruments relating to landed property transactions. Such proposals will take effect as from 1 April 1999 following the making of the Public Revenue Protection (Revenue) Order 1999 by the Chief Executive. Set out below are the department's interpretation and practice on implementing the new measures. They have no binding force and do not affect a person's right to appeal to the Court. In the case of any doubt, reference should be made to the relevant provisions in the Revenue Bill 1999 which is annexed to the Public Revenue Protection (Revenue) Order 1999 for the detailed particulars of the new measures.

A. Revision of stamp duty rates

The new stamp duty rates for stamping a conveyance on sale or an agreement for sale will apply to all such instruments executed on or after 1 April 1999, except a chargeable agreement on residential property which is preceded by another agreement for sale made by the same parties and on the same terms (e.g. a preliminary agreement) executed before 1 April 1999.

B. Deferring payment of stamp duty on chargeable agreements

1. Subject to the conditions specified in item 3 below, the persons liable to stamp a chargeable agreement for sale which, if implemented, would be implemented by a conveyance on sale may apply for deferring the payment of stamp duty.
2. If the application is approved by the Collector, the time for stamping the chargeable agreement for sale shall be as follows -
 - a. where the agreement is completed by a conveyance, 30 days after the

execution of the conveyance or 3 years after the relevant date¹ of the agreement, whichever is the earlier;

- b. where before execution of a conveyance, the property is re-sold or disposed of by way of a nomination or direction made by the purchaser of the agreement [including the arrangement of making a replacement agreement between the vendor and a sub-purchaser introduced or as instructed by the purchaser]², 7 days after the date of the sub-sale or disposition of the property or 3 years after the relevant date of the agreement, whichever is the earlier;
- c. in any other cases, 3 years after the relevant date of the agreement.

3. Conditions for the deferment arrangement to apply are as follows-

- a. an application has to be made to the Collector in a specified form (attached) within 30 days after the date of execution of the agreement;
- b. it is proved to the satisfaction of the Collector that either-
 - (i) the vendor under the agreement is the registered owner; or
 - (ii) all instruments through which the vendor acquires his right or interest in the property from the registered owner are -
 - A. duly stamped, or
 - B. secured to the satisfaction of the Collector by securities given for the payment of the stamp duty chargeable on the instruments in so far as they are not duly stamped; and
- c. where the purchaser or one of the purchasers of the agreement is a company, a banker's undertaking is provided as security for the payment of the stamp duty to be deferred.

4. Application for deferred payment

- a. After an agreement for sale of residential property is made, the agreement has to be forwarded to the Stamp Office (together with a certified copy and

¹ Relevant date is defined under section 29B(3) of the Stamp Duty Ordinance (Cap. 117) to mean the date of execution of an agreement or if the agreement is preceded by one or more agreements or unwritten agreements made by the same parties and on the same terms, the date of execution of the earliest agreement.

² The resale, nomination and the arrangement for resale of the property are defined as specified events in the Revenue Bill 1999 annexed to the Public Revenue Protection (Revenue) Order 1999.

a duly completed property transaction questionnaire form IRSD26) for stamping as usual.

- b. In the case where any person liable to pay the stamp duty wishes to apply for the deferred payment, a completed application form has to be submitted with the required evidences to prove that the conditions for deferring payment have been satisfied.

5. Endorsement and Rejection

- a. If the Collector satisfies that the payment can be deferred, he will make an endorsement on the agreement to such effect. The agreement can then be registered with the Land Registry.
- b. If the Collector does not approve the application, he will advise the applicant (or his solicitor if represented) of his decision and request the latter to make payment of the applicable stamp duty.
- c. The 6-day pledge for stamping property transfer documents applies to the application for deferring payment.
- d. Solicitor firms handling stamping of agreements in bulks are requested to submit the applications for deferred payments in separate batches.
- e. To centralize the process and to avoid delay in processing, all applications for deferring payment and the subsequent payment of stamp duty on the agreement which has previously been deferred should be made to the Stamp Office at 3/F, Revenue Tower, 5 Gloucester Road, Hong Kong. The Sub-offices of the Inland Revenue Department in Kowloon and Tsuen Wan will not process the applications.

6. Payment of stamp duty previously deferred

- a. Upon payment of the stamp duty on the agreement which is previously deferred under the new provisions, the duty payer or the handling solicitor is requested to furnish the following to the Stamp Office -
 - (i) two copies of the Property Transaction Questionnaire (Form IRSD 26) previously submitted with the application for deferring payment,
 - (ii) the original chargeable agreement,

(iii) a completed Requisition for Stamp (Form IRSD 20) and the payment cheque.

- b. Solicitor firms handling stamping of agreements in bulks are requested to submit the requests for the stamping of agreements which are previously deferred for payments in separate batches.

C. Exemption to uncompleted agreement

1. An agreement that is cancelled, annulled, or rescinded or is not performed, other than by reason of a re-sale or disposal of the property by nomination or direction of the purchaser [including the arrangement of making a replacement agreement between the vendor and a sub-purchaser introduced or as instructed by the purchaser], shall be exempted from the stamp duty charge.
2. Stamp Duty paid in respect of such agreements can be refunded upon application made to the Collector within 2 years after the cancellation or rescission, or, in the case where the agreement is not performed, 2 years from the agreed date of completion of the transaction.

D. Forms

A proforma Application Form for deferring payment is available for collection at the Stamp Office. It can also be obtained through the Fax-A-Form Service of the Inland Revenue Department at telephone number 2598 6001. The applicants or the solicitors may also make photocopies of the form for their use.

E. Enquiry

Any enquiry in relation to the stamping of property transactions should be made to the Stamp Office at 3/F, Revenue Tower, 5 Gloucester Road, Hong Kong, or by telephoning 2594 3202.

STAMP OFFICE

INLAND REVENUE DEPARTMENT

1 April 1999

Ref: U3/SC/S187A

Current Rates of Stamp Duty

[Where the stamp duty calculated includes a fraction of \$1, round-up the duty to the nearest \$1.]

On Lease of Immovable Property in Hong Kong

- For lease, duty is calculated at rates which vary with the term of the lease as follows :-

Term		Rate
Not defined or is uncertain		0.25%* of the yearly or average yearly rent
Exceeds	Does not exceed	
	1 year	0.25%* of the total rent payable over the term of the lease
1 year	3 years	0.5%* of the yearly or average yearly rent
3 years		1%* of the yearly or average yearly rent
key money, construction fee etc. mentioned in the lease		3.75% of the consideration if rent is also payable under the lease. Otherwise, same duty as for a sale of immovable property

- Note : (i) * The yearly rent/average yearly rent/total rent has to be rounded-up to the nearest \$100.
(ii) Any deposit which may be mentioned in the lease will not be taken into account in assessing the stamp duty.

On Sale or Transfer of Immovable Property in Hong Kong

- With effect from 1 April 1999, stamp duty on sale of immovable property in Hong Kong is charged at rates which vary with the amount or value of the consideration as follows:-

Amount or value of the consideration		Rate
Exceeds	Does not exceed	
	\$1,000,000	\$100
\$1,000,000	\$1,080,000	\$100 + 10% of excess over \$1,000,000
\$1,080,000	\$2,000,000	0.75%
\$2,000,000	\$2,176,470	\$15,000 + 10% of excess over \$2,000,000
\$2,176,470	\$3,000,000	1.5%
\$3,000,000	\$3,290,320	\$45,000 + 10% of excess over \$3,000,000
\$3,290,320	\$4,000,000	2.25%
\$4,000,000	\$4,428,570	\$90,000 + 10% of excess over \$4,000,000
\$4,428,570	\$6,000,000	3.00%
\$6,000,000	\$6,720,000	\$180,000 + 10% of excess over \$6,000,000
\$6,720,000		3.75%

- Note : (i) With effect from 1 April 1999, the exact amount or value of the consideration will be used to compute the stamp duty for property transfers. That is, round-up of the value or consideration to the nearest \$100 is no more required.
(ii) With effect from 31 January 1992, stamp duty at the same rates as conveyances of immovable property is chargeable on agreements for the sale and purchase of residential property. After the agreement has been so stamped, the related conveyance will be chargeable with a fixed stamp duty of \$100 only.

On Transfer of Hong Kong stock

- With effect from 1 April 1998, stamp duty on sale or purchase of any Hong Kong stock is charged at rate which vary with the amount or value of the consideration as follows:-

Nature of Document	Rate
Contract Note for sale or purchase of any Hong Kong stock	0.125%* of the amount of the consideration or of its value on every sold note and every bought note
Transfer operating as a voluntary disposition inter vivos	\$5 + 0.25% of the value of the stock sold
Transfer of any other kind	\$5

- Note : * Round-up the amount of the consideration or of its value to the nearest \$1,000.
U3/SC/S189 (4/1999)