

Seminar on Adjustments to Ad Valorem Stamp Duty and Related Practice Guidelines

EAA Practice Circular No.14-03(CR)

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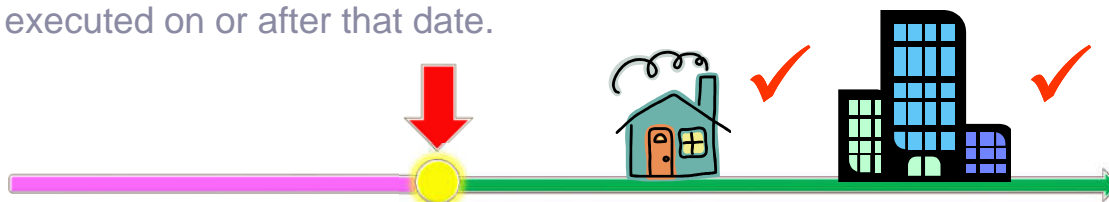
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Foreword

- The Stamp Duty (Amendment) (No. 2) Ordinance 2014 (“SDAO2”) 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
 - › 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.



Circumstances under which the AVD at Scale 1 is payable

- 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.
- 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 resident (“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.

Circumstances under which the AVD at Scale 1 is payable

- For stamp duty purposes, a provisional agreement for sale and purchase (“PASP”) is a chargeable agreement for sale.
- 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.

Calculation and rates of AVD at Scale 1

- 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

- 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.

- Refer to the website of the Inland Revenue Department for more details regarding the increase of the AVD at :

Q & A for ad valorem stamp duty (AVD):

www.ird.gov.hk/eng/faq/avd.htm

Illustrative examples of the application and computation of AVD:

www.ird.gov.hk/eng/faq/avdexample.htm