

Circular

Circular No. 11-03 (CR)

- The disposal (which includes a resale or transfer) within 24 months of a residential property acquired on or after 20 November 2010 will be subject to a special stamp duty.
- Practitioners 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 a special stamp duty if it can be ascertained from the land search of the property and/or the vendor that the property was acquired by the vendor on or after 20 November 2010 and that its sale under the PASP is within 24 months from the date of acquisition.
- Practitioners should advise their clients to agree on which party shall pay the special stamp duty and specify in the PASP their agreement.

Special Stamp Duty

The Stamp Duty (Amendment) Ordinance 2011 (SDAO), deemed to have taken effect from 20 November 2010, imposes a special stamp duty (SSD) on top of the *ad valorem* stamp duty on transactions of residential property acquired on or after 20 November 2010 and disposed of within 24 months from the date of acquisition, and cancels the arrangements under the Stamp Duty Ordinance (Cap. 117) (SDO) for the deferral of payment of stamp duty chargeable on agreements for sale of residential property valued at \$20 million or below.

Practitioners are reminded to take note of the changes brought by the SDAO to the SDO when handling the sale and purchase of residential properties and, in particular, the following:

Circumstances under which the SSD is payable

- (a) Unless the transaction is exempted from the SSD under the SDAO, 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/transferor on or after 20 November 2010; and
 - (iii) the property is disposed of by the vendor/transferor within 24 months 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) Practitioners 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 on or after 20 November 2010 and that its sale under the PASP is within 24 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 higher, at the following regressive rates within the following periods beginning on the date of acquisition –

Date of disposal	Rate
Within a period of 6 months	15%
After expiry of a period of 6 months but within a period of 12 months	10%
After expiry of a period of 12 months but within a period of 24 months	5%

Liability for payment of SSD

- (e) As both vendor and purchaser are jointly and severally liable for payment of the SSD, practitioners 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, practitioners 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). Practitioners should also invite their clients to seek legal advice, if necessary, before proceeding with the execution of the PASP.

Practitioners are strongly advised to refer to the *Stamp Office Interpretation and Practice Notes No. 5, Q & A for SSD* and *Illustrative examples of the application and computation of SSD* 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 and www.ird.gov.hk/eng/faq/ssdexample.htm respectively, for more details regarding the SSD.

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

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