

Double Ad Valorem Stamp Duty

- Scope of Stamp Duty (Amendment)(No. 2) Ordinance 2014
- Rates - AVD
- Chargeable instrument
- AVD at Scale 2 rates
- Date of acquisition and disposal
- Car parking space
- Exchange of immovable property
- Partial refund for redevelopment

- Partial refund for change of residential property
- Application for charging AVD at Scale 2 rates
- Application for partial refund
- Exemption
- Further stamp duty
- Liable person
- Time for payment
- Admissibility of instrument

Scope of Stamp Duty (Amendment) (No. 2) Ordinance 2014

- Increase rates of ad valorem stamp duty (“AVD”); and
- Advance the charging of AVD on non-residential property transactions
- Effective date: 23 February 2013

Rates - AVD

Consideration or property value (whichever is the higher)	Scale 1 rates	Scale 2 rates (original rates)
Up to \$2,000,000	1.5%	\$100
\$2,000,001 to \$3,000,000	3.00%	1.5%
\$3,000,001 to \$4,000,000	4.50%	2.25%
\$4,000,001 to \$6,000,000	6.00%	3.00%
\$6,000,001 to \$20,000,000	7.50%	3.75%
\$20,000,001 and above	8.5%	4.25%

Chargeable instrument

- Chargeable instrument means ?



Chargeable instrument

Instruments chargeable with AVD at Scale 1 rates

- Unless exempted or otherwise provided, all chargeable agreements for sale or conveyances on sale are chargeable with AVD at Scale 1 rates.
- Scale 1 rates are not applicable to instruments executed before 23.2.2013.

7



Chargeable Instrument

Example 1

Mr A entered into an agreement for sale on 17.2.2013 to acquire a non-residential property. The assignment was signed on 28.3.2013.

- Is the agreement chargeable with AVD?
- Should scale 1 or scale 2 rates apply?

8

Chargeable Instrument

Multiple properties under one instrument

- Residential properties only
- Residential and non-residential properties
 - Properties are inseparable
 - Properties are separable

Chargeable Instrument

- Nomination of residential property – not a chargeable agreement for sale if:
 - 3 conditions are satisfied

Chargeable instrument

Example 2

Mr A acquired a residential property. He nominated his spouse Ms B to take up the assignment. Ms B was acting on her own behalf in acquiring the property. At the time of nomination, Ms B did not own any residential property in Hong Kong

- Is the nomination chargeable with AVD?

Chargeable instrument

- 2 agreements for sale made between the same parties and on the same terms or not would affect the stamping requirements of the 2 agreements

Chargeable instrument

- 2 or more purchasers in residential property transaction are treated as the same person if, on the date of agreement
 - 3 conditions are satisfied

Chargeable instrument

Example 3

By a provisional agreement (“PASP”) dated 1.1.2014, Mr A acquired a residential property. In the formal agreement (“ASP”) dated 15.1.2014, his spouse Ms B was added as one of the purchasers. On the date of ASP, Ms B did not own any residential property in Hong Kong and she was acting on her own behalf in acquiring the property

- Is the PASP chargeable with stamp duty?

AVD at Scale 2 rates

Hong Kong permanent resident (“HKPR”) who acquires residential property if, on the date of acquisition

- 2 conditions are satisfied

AVD at Scale 2 rates

Example 4

Mr A, a HKPR acquired a residential property on his own behalf on 1.1.2014. He did not have any other residential property in Hong Kong on the date of acquisition

- Should scale 1 or scale 2 rates apply?



AVD at Scale 2 rates

Example 5

Mr A acquired a residential property on 1.1.2014 on behalf of Mr B. Mr B is a HKPR who did not have any other residential property in Hong Kong on the date of acquisition

- Should scale 1 or scale 2 rates apply ?
- Should BSD be chargeable?

17



AVD at Scale 2 rates

Example 6

Mr A acquired a residential property on 1.1.2014 on behalf of Mr B. Mr B is a HKPR and a MIP who did not have any other residential property in Hong Kong on the date of acquisition.

- Should scale 1 or scale 2 rates apply ?
- Should BSD be chargeable?

18

AVD at Scale 2 rates

Example 7

Mr A acquired a residential property on 1.1.2014 on behalf of Mr B. Mr B is a HKPR and a minor who did not have any other residential property in Hong Kong on the date of acquisition.

- Should scale 1 or scale 2 rates apply ?
- Should BSD be chargeable?

AVD at Scale 2 rates

- Meaning of HKPR

AVD at Scale 2 rates

- Meaning of MIP

AVD at Scale 2 rates

Documentary evidence: MIP

- Court order or guardianship order
- Trust instrument
- Source of funds

AVD at Scale 2 rates

Documentary evidence: Minor

- Birth certificate,
- Appointment of guardian
- Trust instrument
- Source of funds

AVD at Scale 2 rates

Beneficial owner of residential property

- Including
 - the beneficial owner of part of the property
 - purchaser under an agreement
- Excluding
 - vendor under an agreement
 - trustee

Date of acquisition and disposal

Dates of acquisition

- The date of the first agreement for acquiring the property
 - What if no agreement for sale was made?
 - What if 2 or more immovable properties were acquired on the same date?

Date of acquisition and disposal

Dates of disposal

- The date of the first agreement for disposal of the property
 - What if no agreement for sale was made?
 - What if 2 or more properties were disposed of on the same date?

Date of acquisition and disposal

- Before completion of transaction, one of the original purchasers withdraws:
 - Date of acquisition by the withdrawn purchaser ?
 - Date of disposal by the withdrawn purchaser ?

Date of acquisition and disposal

Example 8

Mr A and Ms B signed a PASP to acquire a property. Ms B withdrew from the transaction and in the ASP, only Mr A was named as the purchaser.

- What is the date of acquisition of the property by Ms B?
- What is the date of disposal of the property by Ms B?

Date of acquisition and disposal

- Before completion of transaction, an additional purchaser joins in the transaction:
 - Date of disposal of part of the property by the original purchaser?
 - Date of acquisition of part of the property by the additional purchaser?

Date of acquisition and disposal

Example 9

Mr A signed a PASP to acquire a property. Ms B joined in the ASP as additional purchaser.

- What is the date of disposal of the property by Mr A?
- What is the date of acquisition of the property by Ms B?

AVD at Scale 2 rates

- A HKPR and his/her close relative(s) acquire a residential property, if on the date of acquisition
 - 2 conditions are satisfied.

AVD at Scale 2 rates

Example 10

Mr A (HKPR) and his spouse Ms B (non-HKPR) acquired a residential property. Both of them are acting on their own behalf and did not own any other residential property in Hong Kong on the date of acquisition.

- Should scale 1 or scale 2 rates apply ?

AVD at Scale 2 rates

Example 11

Same as example 10 but Mr A owned a residential property in Hong Kong on the date of acquisition

- Should scale 1 or scale 2 rates apply ?

AVD at Scale 2 rates

- Transfer of residential property between close relatives and the transferee is acting on his/her own behalf

AVD at Scale 2 rates

Example 12

Mr A transfers his residential property to his spouse Ms B (non-HKPR) who is acting on her own behalf in acquiring the property

- Should scale 1 or scale 2 rates apply ?

AVD at Scale 2 rates

Example 13

Mr A transfers his non-residential property to his spouse Ms B

- Should scale 1 or scale 2 rates apply ?

AVD at Scale 2 rates

- Nomination of close relative(s), who owns other residential property in Hong Kong, to take up the agreement for sale or assignment of a residential property

AVD at Scale 2 rates

Example 14

Mr A acquired a residential property. He nominated his spouse Ms B to take up the assignment. Ms B was acting on her own behalf in acquiring the property. At the time of nomination, she already owned another residential property in Hong Kong.

- Is the nomination chargeable with stamp duty?
- Should scale 1 or scale 2 rates apply ?

AVD at Scale 2 rates

- Addition of new purchaser or withdrawal of purchaser before completion of residential property transaction:
 - close relatives?
 - owning other residential property in Hong Kong?

AVD at Scale 2 rates

Example 15

By a PASP dated 1.1.2014, Mr A acquired a residential property. Before completion of the transaction, he added his spouse Ms B in the conveyance as one of the transferees. Ms B owned another residential property in Hong Kong on the date of conveyance.

- Should scale 1 or scale 2 rates apply ?
- How is AVD computed?

AVD at Scale 2 rates

Example 16

By a PASP dated 1.1.2014, Mr A and his spouse Ms B acquired a residential property. Mr A owned other residential property in Hong Kong on the date of acquisition of the residential property. In the conveyance, Mr A was named as the sole transferee.

- Should scale 1 or scale 2 rates apply ?
- How is AVD computed?

AVD at Scale 2 rates

- Replacement of immovable property if original property was acquired by Urban Renewal Authority or sold or resumed under certain Ordinances
 - 2 specified conditions still required?

AVD at Scale 2 rates

- Court order
- Mortgaged property
- Acquisition of a residential property made under the Tenants Purchase Scheme
- Lease
 - assignment or surrender of lease;
 - lease with inadequate rent; and
 - lease consists of premium

Car Parking Space

- Scale 2 rates apply for acquisition of residential property with a car parking space under a single instrument and the buyer:
 - satisfies 2 conditions

Car Parking Space

“Car parking space” means ?

Car Parking Space

Example 17

Mr A (HKPR) entered into a PASP to acquire a residential property and a car parking space on his own behalf. On the date of acquisition, he did not have any residential property or car parking space in Hong Kong.

- Should scale 1 or scale 2 rates apply ?
- How is AVD computed?

Car Parking space

Example 18

Mr A (HKPR) entered into a PASP to acquire a residential property and two car parking spaces on his own behalf. On the date of acquisition, he did not own any residential property or car parking space in Hong Kong.

- Should scale 1 or scale 2 rates apply ?
- How is AVD computed?

Car parking space

Example 19

Mr A (HKPR) and his spouse Ms B (non-HKPR) entered into a PASP to acquire a residential property and a car parking space on their own behalf. On the date of acquisition, they did not own any residential property or car parking space in Hong Kong.

- Should scale 1 or scale 2 rates apply ?
- How is AVD computed?

Exchange of immovable property

Exchange of residential properties

- Scale 2 rates apply if on the date of the instrument each party is acting on his/her own behalf and:
 - either one of the 2 conditions is satisfied

Exchange of immovable property

Example 20

Mr A (HKPR) owned a residential property X and Mr B (HKPR) owned a residential property Y. They executed an agreement for exchange whereby property X was exchanged for property Y. Mr A and Mr B did not own any other residential property in Hong Kong other than the properties being exchanged.

- Should scale 1 or scale 2 rates apply ?
- How is AVD computed?

Exchange of immovable property

Example 21

Mr A (HKPR) owned a residential property X and Mr B (non-HKPR) owned a residential property Y. They executed an agreement for exchange whereby property X was exchanged for property Y. Mr A and Mr B did not own any other residential property in Hong Kong other than the properties being exchanged. They are not close relatives.

- Should scale 1 or scale 2 rates apply ?
- How is AVD computed?

Exchange of immovable property

Exchange of residential property for non-residential property

- Scale 2 rates apply if the “equality money” is paid by the transferee/purchaser of residential property who is acting on his/her own behalf and
 - either one of the 2 conditions is satisfied



Exchange of immovable property

Example 22

Mr A (HKPR) used his non-residential property to exchange for Mr B's (HKPR) residential property. Mr A paid an "equality money" to Mr B. On the date of the agreement, Mr A did not own any other residential property in Hong Kong.

- Should scale 1 or scale 2 rates apply ?
- How is AVD computed?

53



Exchange of immovable property

Example 23

Mr A (HKPR) used his non-residential property to exchange for Mr B's (HKPR) residential property. Mr B paid an "equality money" to Mr A. On the date of the agreement, Mr A did not own any other residential property in Hong Kong.

- Should scale 1 or scale 2 rates apply ?
- How is AVD computed?

54

Exchange of immovable property

Example 24

Mr A (non-HKPR) used his non-residential property to exchange for Mr B's (HKPR) residential property. Mr A paid an "equality money" to Mr B. Mr A and Mr B are not close relatives.

- Should scale 1 or scale 2 rates apply ?
- How is AVD computed?

Partial refund for redevelopment

- Consent from the Building Authority has been given to commence any foundation works; or
- has demolished the existing buildings (if any); and has obtained approval of building plans
- Does not cover acquisition of property for refurbishment or renovation

Partial refund for redevelopment

- If the property was subsequently transferred by a body corporate to an associated body corporate
 - the latter can apply for partial refund of AVD paid by the former?

Partial refund for change of residential property

- HKPR acquired a new residential property to replace his/her only other original residential property in Hong Kong:
 - original property has been disposed of within 6 months after the date of the conveyance on sale of the new property
 - application for refund must be made not later than 2 months after the date of the conveyance on sale of the original property or not later than 2 years after the date of the relevant instrument for acquiring the new property, whichever is the later



Partial refund for change of residential property

Example 25

On 1.1.2014, Mr A (HKPR) entered into a PASP to acquire a new residential property. On the date of acquisition, he owned another residential property in Hong Kong. AVD at scale 1 rates was paid on acquisition of the new property. On 1.3.2014, he entered into another PASP to dispose of the original property.

- Is Mr A entitled to claim for partial refund?

59



Partial refund for change of residential property

Example 26

Mr A (HKPR) owned another residential property in Hong Kong when he entered into a PASP to acquire two new residential properties. Within 6 months from the date of assignment of the new properties, he entered into another PASP to dispose of the original property. AVD at Scale 1 rates has been paid for acquisition of the new properties.

- Is Mr A entitled to claim for partial refund?

60



Application for charging AVD at Scale 2 rates

HKPR

- Statutory declaration (IRSD 131) made by each purchaser/transferee, declaring
 - he/she is a HKPR
 - acquired the property on his/her own behalf; and
 - was not the beneficial owner of any other residential property (and car parking space, if applicable) in Hong Kong

61



Application for partial refund

For change of residential property cases

- Form IRSD 125A
- Statutory declaration (IRSD131C) made by each purchaser/transferee declaring
 - he/she is a HKPR
 - he/she was acting on his/her own behalf
 - he/she and was not a beneficial owner of any other residential property (and any car parking space, if applicable) in Hong Kong except the original residential property
- Other required documents

62

Application for partial refund

For properties acquired for redevelopment

- Form IRSD 125B (for individual person) or IRSD 125C (for body corporate).
- Other documents, such as consent of Building Authority and evidence to prove the payment of AVD at Scale 1

Exemption of AVD

- Gift to charitable institution
- Associated bodies corporate
- Acquisition of property by Government

Further stamp duty

- The original residential property was disposed of before the acquisition of the new residential property and Scale 2 rates has been paid
- The agreement for disposal of the original residential property is cancelled, annulled, etc.
- The purchaser is liable to pay the difference between AVD paid and AVD calculated at Scale 1 rates

Liable person

- Vendor/transferor and purchaser/transferee are jointly and severally liable
- Any person who uses the instrument
- For residential property transaction, if AVD is underpaid due to wrong declaration of purchaser/transferee, vendor/transferor will not be liable to pay the AVD underpaid

Time for payment

- Within 30 days after the execution date of the chargeable agreement for sale or conveyance on sale

Admissibility of instruments

- Generally, instruments not duly stamped are not admissible in civil proceedings, except what circumstances?

Thank you