

Seminar on Special Stamp Duty and Buyer's Stamp Duty

EAA New Practice Circular No. 14-02(CR)

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Foreword

- **Practice Circular No. 14-02(CR) on Special Stamp Duty and Buyer's Stamp Duty**
- **Issued in May 2014**

SPECIAL STAMP DUTY (SSD)

Circumstances under which SSD is payable

Unless the transaction is exempted from the SSD, the liability to pay the SSD **will arise** if –



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Circumstances under which SSD is payable

- Date of a chargeable agreement for sale
= Date a person “acquires” or “disposes of” a property
- Chargeable agreement for sale includes a **provisional agreement for sale and purchase (“PASP”)**

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Circumstances under which SSD is payable

- Licensees **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:
 - **between 20 November 2010 and 26 October 2012** and its sale under the PASP is **within 24 months** from the date of acquisition, or
 - **on or after 27 October 2012** and its sale under the PASP is **within 36 months** from the date of acquisition.

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Calculation and rates of SSD

- The SSD payment 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 **regressive rates** within the following periods beginning on the date of acquisition

Date of disposal	Rate for properties acquired between 20 November 2010 and 26 October 2012	Rate for properties acquired on or after 27 October 2012
Within a period of 6 months	15%	20%
After expiry of a period of 6 months but within a period of 12 months	10%	15%
After expiry of a period of 12 months but within a period of 24 months	5%	10%
After expiry of a period of 24 months but within a period of 36 months	--	10%

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Liability for payment of SSD

- Both vendor and purchaser are **jointly and severally** liable for payment of the SSD
- Licensees **should**
 - advise 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, further advise 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).
 - invite clients to **seek legal advice** on their liability for payment of the SSD, if necessary, before proceeding with the execution of the PASP.

BUYER'S STAMP DUTY (BSD)

Circumstances under which BSD is payable

Unless specifically exempted, BSD is payable if:

- the property to be acquired is a residential property; and
- the agreement for sale or conveyance on sale is executed **on or after 27 October 2012**
- PASP is a chargeable agreement for sale
- **Exception: the purchaser or transferee is a Hong Kong permanent resident (“HKPR”) acquiring the property on his/her own behalf.**

BSD rate and liability for payment of BSD

BSD rate

- Charged at the rate of **15%** on the stated consideration or market value of the property, whichever is the higher.

Liability for payment of BSD

- The purchaser or transferee is liable to pay the BSD.

BSD rate and liability for payment of BSD

Licensees should:

- bring to the attention of their purchaser clients **before entering into any PASP** that the purchase of the property concerned will be subject to payment of a BSD, unless he/she is a HKPR acquiring the property on his/her own behalf; and
- invite their purchaser clients to **seek legal advice** on their liability for payment of the BSD, if necessary, before proceeding with the execution of the PASP.

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- **Refer to the website of the Inland Revenue Department for more details regarding the SSD and the BSD:**
 - Stamp Office Interpretation and Practice Notes No.5 (Revised):
www.ird.gov.hk/eng/pdf/e_soipn05.pdf
 - Q&A for SSD and BSD: www.ird.gov.hk/eng/faq/ssd.htm &
www.ird.gov.hk/eng/faq/bsd.htm
 - Illustrative examples of the application and computation of SSD & BSD:
www.ird.gov.hk/eng/faq/ssdexample.htm and www.ird.gov.hk/eng/faq/bsdexample.htm

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