



Special Stamp Duty comes into effect

The Stamp Duty (Amendment) Ordinance, which gives effect to the Special Stamp Duty (SSD) on residential property, was gazetted on 30 June 2011 and has effect from 20 November 2010.

Background

The Financial Secretary, on 19 November 2010, advised that SSD was to be introduced to curb short term speculative activity in residential properties and reduce the risk of asset price bubbles forming (for further background, please see [Tax alert Issue 28 November 2010](#)). SSD applies to the full value of sale proceeds and is in addition to *ad valorem* Stamp Duty of up to 4.25 percent. The rates of SSD are as follows:

- 15 percent if the property has been held for six months or less
- 10 percent if the property has been held for more than six months but for 12 months or less
- Five percent if the property has been held for more than 12 months but for 24 months or less.

SSD is effective for sales of residential property acquired on or after 20 November 2010. In respect of agreements for sale executed between 20 November 2010 and 30 June 2011 (the date of the entry into force of the new law), SSD has to be paid by 1 August 2011. Where a residential property acquired by the seller on or after 20 November 2010 is disposed of or transferred on or after 30 June 2011 (i.e. the chargeable agreement for sale is signed on or after 30 June 2011) and the property holding period is within 24 months, SSD is payable within 30 days after the date of signing the chargeable agreement. If there is no chargeable agreement for sale, SSD is payable within 30 days after the date of the conveyance document.

For a residential property acquired prior to 20 November 2010, the subsequent disposal is not subject to SSD.

Exemption from payment of SSD is granted to the disposal of residential properties acquired after 20 November 2010 and re-sold within 24 months or less under the following circumstances:

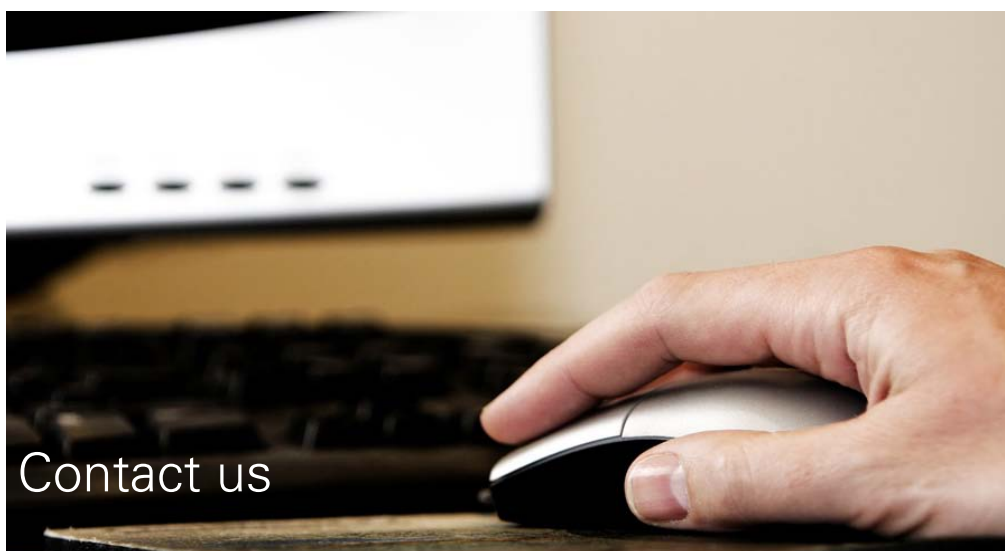
- Nomination of a parent, spouse or child, brother or sister to take up the assignment of the property (in this regard, the Inland Revenue Department has indicated that it will accept persons who are blood-related, half-blood related, adopted or step-related for SSD purposes)
- Addition/deletion of the name if the person is a parent, spouse, child, brother or sister of the original purchaser
- Sale, transfer or vesting of a property made by the courts or pursuant to a court order, including a compulsory sales order made under the Land (Compulsory Sale for Redevelopment) Ordinance, and a foreclosure order made to a mortgagee, irrespective of whether the mortgagee is a financial institution within the meaning of Sec. 2 of the IRO, and the property was sold to/transferred to or? vested in the seller by or pursuant to any decree or order of any court
- The property sold relates solely to a bankrupt's estate or the property of a company which is being wound up by the court by reason of its inability to pay debts
- Sale of mortgaged properties by a mortgagee which is a financial institution within the meaning of Sec. 2 of the Inland Revenue Ordinance, or by a receiver appointed by such a mortgagee
- Sale or transfer of a property between associated companies
- Sale or transfer of a property to the Government
- Sale or transfer of a property that relates to the estate of a deceased person, and the sale or transfer of a residential property by a person who inherited the property from a deceased person's estate or is passed to that person under the right of survivorship
- Sale or transfer of a property between associated body corporates.

Further, SSD does not apply to the sale of first-hand residential properties. That is, the sale/transfer of residential units built on a bare site is not chargeable to SSD, regardless of whether the bare site has been acquired by the developer from the Government or from another developer. The sale/transfer of redeveloped residential flats after demolition of the original properties acquired is also not chargeable to SSD. The sale/transfer of a bare site after demolition of the original properties acquired is also not chargeable to SSD.

In addition, for residential property transactions valued at HKD 20 million or less, the option to defer payment of stamp duty chargeable on the agreements for sale and purchase of residential property executed on or after 30 June 2011 is withdrawn.

The Stamp Office has issued Stamping Circular No. 2 of 2011, Procedural Matters in relation to the Stamp Duty (Amendment) Ordinance 2011 and this can be accessed at:

http://www.ird.gov.hk/eng/pdf/so_ext_cir02_2011_e.pdf



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