March 2017

Introduction of Additional Conveyance Duties

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Additional Conveyance Duties (ACD) on **Residential Property-Holding Entities (PHE)** have been implemented in Singapore, effective 11 March 2017. This client alert is aimed at providing a high level overview to our clients on the ACD. There are many nuances to the rules and it is highly recommended that you seek professional advice when considering a transaction.

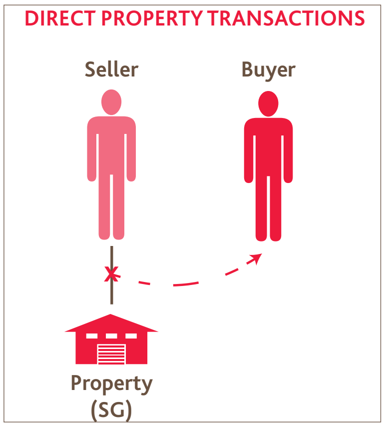
Why ACD?

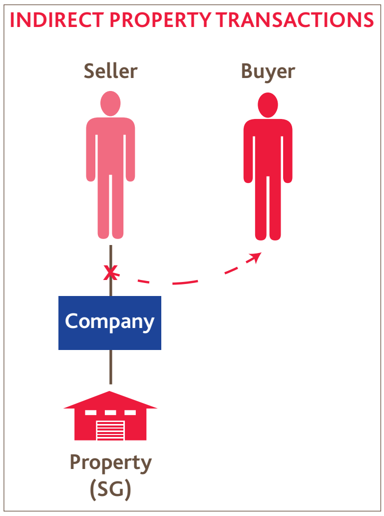
The purpose of the ACD is to eliminate the difference in stamp duty treatment of residential property transactions that previously existed.

In a direct property transaction in Singapore, where a seller transfers its title to the buyer, the following stamp duties would apply:

- Buyer stamp duty (BSD) – 1% on the first $180,000, 2% on the next $180,000 and 3% thereafter;
- Additional buyer stamp duty (ABSD) – up to 15%, depending on factors such as the nationality of the buyer and the number of properties owned. Foreigners and entities such as companies would be liable for ABSD of 15%; and
- Seller stamp duty (SSD) – up to 12%, depending on how long the seller has held on to the property.

Prior to ACD, the above duties could be avoided in an indirect transaction, where the property was held by a company and the seller sold the shares of the company instead of the property itself. This would have resulted in stamp duties on the transfer of shares at a rate of 0.2%, resulting in significant stamp duties savings.





How will ACD work?

To align the stamp duty treatment of direct and indirect transfers of residential property, the ACD will be applied on certain transfers of shares in PHEs, which are entities whose primary tangible assets are Singapore residential properties. There are two forms of ACD: (i) ACD applying to buyers of the shares (ACDB); and (ii) ACD applying to sellers of the shares (ACDS). Unlike stamp duties on shares, which are based on the higher of the transaction value or net asset value of the shares, ACD will be based on the market value of the underlying property.

ACDB consists of two portions. The first portion is charged at 1% on the first $180,000, 2% on the next $180,000 and 3% thereafter. This is in effect the equivalent of BSD. The second portion is 15% of the value of the underlying property transferred. This is equivalent to the highest tier of ABSD.

ACDS will be charged at 12% of the value of the underlying property transferred. This is equivalent to the highest tier of SSD.

ACDB and ACDS will be charged on top of the stamp duty applicable to the transfer of shares in the PHE.

This means that indirect transfers of residential property would attract stamp duties higher than direct transfers of property. This is illustrated in the table below, where there is a transfer of a Singapore residential property valued at $5m, financed with a bank loan of $1m. For the purpose of this example, we assume that the transfer is made by a Singapore permanent resident private client who wishes to transfer the property into a trust. We assume that he has not transferred ownership of this property for five years prior to this transaction and is not liable for SSD.

	DIRECT TRANSFER			INDIRECT TRANSFER		
	Rate (%)	Base amount ($)	Duty payable ($)	Rate (%)	Base amount ($)	Duty payable ($)
Share transfer				0.20%	4,000,000	8,000
BSD	1%	180,000	1,800			
	2%	180,000	3,600			
	3%	4,640,000	139,200			
ABSD	10%	5,000,000	500,000			
SSD	0%	5,000,000	-			
ACDB				1%	180,000	1,800
				2%	180,000	3,600
				3%	4,640,000	139,200
				15%	5,000,000	750,000
ACDS				12%	5,000,000	600,000
Total duty payable			644,600			1,502,600

Who should be concerned?

In addition to clients who may be considering a sale or purchase of a PHE, clients who intend to transfer a PHE into a trust or as part of a reorganisation of their asset holding structures may similarly be affected. Stamp duty is applicable on the value of the assets transferred, even if there is no consideration.

Areas of uncertainty

Two areas of uncertainty have presented themselves at this stage.

The first is its scope. Will it apply to the transfer of shares of offshore entities that hold residential properties in Singapore? The new rules state that the transfer of shares in a "company", which is defined in the Stamp Duties Act to include companies incorporated outside Singapore. However, it is our understanding that the new rules operate as part of the existing regime, where an instrument needs to be stamped only if it is received in Singapore.

Regardless, the spectre of the anti-avoidance rules remain. These rules provide that the IRAS can impose ACD even if the conditions were not met, if it is satisfied that the arrangement was to circumvent the conditions, suggesting that it is possible for the IRAS to take a position that stamp duties are chargeable on such transactions.

The second area of uncertainty is a practical one. What would be the stamp duty payable for a private client who wishes to transfer his offshore entities holding residential properties in Singapore into a trust, especially one where she may be the main beneficiary? The primary mode available to determine the stamp duty payable is through the adjudication process, but the IRAS currently requires the submission of the executed instrument as part of the application for adjudication. This means that the private client would be bound by the decision of the IRAS even if the result of the adjudication process is unfavourable.

While we expect these uncertainties to be resolved in the coming weeks, we strongly recommend clients seek professional advice when entering transactions involving PHEs in order to manage ACD exposure.

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