

Summary of the Suspension Mechanism of Stamp Duty for Incoming Talents' Purchase of Residential Property

Key arrangements of the mechanism are summarised below –

- (a) when an eligible incoming talent¹ purchases a residential property in Hong Kong **on or after 25 October 2023** (i.e. the 2023 PA date), he/she may apply to the Inland Revenue Department (“IRD”) for **suspension of stamp duty** in respect of the Buyer’s Stamp Duty (“BSD”) and the difference between New Residential Stamp Duty (“NRSD”) and ad valorem stamp duty (“AVD”) at Scale 2 rates (i.e. “specified amount”) when presenting the instrument of acquisition to IRD for stamping. The talent still has to pay AVD at Scale 2 rates to IRD;
- (b) upon IRD’s vetting and approval of the application for suspension, **a statutory charge will be constituted in favour of the Collector of Stamp Revenue (“Collector”) automatically by law**. IRD will register an instrument denoting the charge (i.e. **a certificate of charge**) at the Land Registry (“LR”). In terms of priority, the charge in favour of the Collector will be **second only to the first mortgage for acquiring the property to the extent of a reserved amount**²;
- (c) **after the eligible incoming talent becomes a HKPR**, he/she can submit an **application for waiver** to IRD for **waiving the liabilities in respect of the specified amount**. Upon IRD’s vetting and approval of the relevant application, IRD will issue **a certificate of discharge** in respect of the charge in favour of the Collector, which has the effect of discharging the charge and is registrable at LR; and
- (d) in the event that the eligible incoming talent buyer **fails to become HKPR within nine years** from the date when he/she is permitted to stay in Hong Kong under the designated talent scheme (i.e. seven years of ordinary residence in Hong Kong plus two years as buffer), or under certain triggering circumstances³, he/she will be liable to **pay the specified amount to IRD within 30 days** of the occurrence of the circumstance. If the eligible incoming talent buyer fails to do so, he/she will be liable to pay late stamping penalty, which is set with reference to the existing provision on “late stamping” under the section 9 of the Stamp Duty Ordinance⁴.

¹ An eligible incoming talent is a person to whom a specified talent scheme applies (provided under Schedule 12 to the Stamp Duty Ordinance), who at the time of acquisition of the residential property, is not a beneficial owner of any other residential property.

² The reserved amount would be the lower of (a) the actual amount of the principal and interest in respect of the loan for acquiring the subject property under the acquisition mortgage concerned; or (b) an amount arrived at by deducting the specified amount from the amount/value of the consideration for the acquisition of the subject property to cater for cases where the sum of mortgage loan taken out exceeds the value/consideration of the property.

³ The triggering circumstances are (a) *on any date before the deadline for waiver* – if the eligible incoming talent buyer/each of the eligible incoming talent co-buyers cease(s) to be a beneficial owner of the subject property, or a person, other than one closely related to the talent buyer or all of the remaining co-buyers, becomes a beneficial owner of the subject property; and (b) *as at the deadline for waiver* – in case where no liability has been waived by the Collector in respect of the specified amount.

⁴ The late stamping penalty is to be imposed according to the following scale - (a) Not exceeding 1 month – double the amount of the specified amount; (b) Exceeding 1 months but not exceeding 2 months – 4 times the specified amount; and (c) In any other case – 10 times the amount of the specified amount.

Points to note for estate agents and solicitors handling related transactions –

Scenario 1: Incoming talent wishes to acquire his/her first property in Hong Kong

1. Confirm whether the buyer is an eligible incoming talent (i.e. permitted to stay in Hong Kong by virtue of being a person to whom a specified talent scheme applies as provided under Schedule 12 to the Stamp Duty Ordinance);
2. If the buyer is an eligible incoming talent, when presenting the instrument of acquisition in respect of the property to IRD for stamping, he/she has to apply for **suspension of the relevant stamp duty** (i.e. “specified amount”) at the same time;
3. Remind the incoming talent that **when he/she becomes a HKPR, he/she has to apply to IRD for waiving** the liabilities in respect of the specified amount, in order to discharge the charge registered at LR; and
4. Remind the incoming talent that he/she has to **become HKPR within nine years** from the date when he/she is permitted to stay in Hong Kong under the designated talent scheme. If he/she has not become HKPR by then, or certain triggering circumstances occurred (see footnote 3), he/she will be liable to pay the specified amount to IRD within 30 days of the occurrence of the circumstance. If the incoming talent fails to pay the stamp duty so before the deadline, he/she will be liable to pay a penalty. The maximum penalty is 10 times the amount of the specified amount.

Scenario 2: Incoming talent already owned a property in Hong Kong, and wishes to acquire a second property for the purpose of replacing his/her property

1. Confirm whether the incoming talent buyer has paid BSD and NRSD in respect of the original property;
2. Remind the incoming talent that when he/she acquires the new property, he/she should first pay BSD and NRSD in respect of the new property. When the buyer has disposed of the original property within one year after his/her acquisition of the new property, he/she may **apply to IRD for refund of the specified amount and suspension of the same in respect of the new property**; and
3. Remind the incoming talent that **when he/she becomes a HKPR, he/she has to apply to IRD for waiving** the liabilities in respect of the specified amount, in order to discharge the charge registered at LR.

Scenario 3: Other buyers interested in acquiring a property registered with a charge in favour of the Collector (i.e. incoming talent as seller)

1. Pay attention to whether there is a charge in favour of the Collector registered in the land record of the property; and
2. If the relevant property is registered with such charge, confirm with the incoming talent seller that the relevant specified amount would be paid within 30 days after the signing of the agreement for sale and purchase, in order to discharge the charge; and remind the buyer that if the seller has not paid the amount to discharge the charge by the deadline, the charge will continue to be registered on the land record of the property after completion of the transaction.
